VOLUME 20

Service Manuals, RTI & Office Procedure

Odisha Service Manual · inquiry handbook · office procedure · service rules · AIS · Right to Information

20

COMPILED BY

Upendra Luha, OAS

odisharevenuelaws.com

Edition · November 2026

2024

User Manual for E-Diary (Govt of Odisha)



Odisha Computer Application Centre

1/10/2022

User Manual For E-Diary Using Mobile Device

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1. Brief Introduction about the E-Diary

E-Diary is advance secure and easy use mobile application which let you write daily note, meetings, Schedule Events, Remainders to save to both your device and on Odisha Govt cloud storage. Use this application to organize your notes, Meetings, Events, Holidays and ideas. This application has a simple user interface which makes it easy for using.

1.1 Application Features Include:

- Diary: A writing section where users will write the notes on specific date using mobile keyboard.
- Scheduler: Schedule a meeting with date, attendees and additional notes on the meeting.
- Directory: To know all about offices, officers , district details, map, tourist places.
- Calendar: View of calendar with holidays, events, meetings.
- Holiday list: Display of all govt holidays.
- Demographic: Display of important information about district like population, headquarter.
- Other Info: View of information's like email list, useful links, telephone numbers

1.2 How to access the E-Diary application :

E-Diary application is available on the link : e-diary.odisha.gov.in for all internet users using browsers.

Types of users :

- Android Users
- iOS users
- Window users (These users will use the application using their browsers).

2. How to Install E-Diary On your Android/iOS Device

2.1 For Android users:

- Go to Play Store in your Android Phone.
- Search "Odisha Govt. Diary" App 

- Click on the Install button to install the "Odisha Govt. Diary" App.



2.2 For iOS/Apple users:

- Go to App Store

- Search “Odisha Govt. Diary” App
- Click on the Get button to download and install the “Odisha Govt. Diary” App

3. Get started with your installed E-Diary application.

- After installation is complete, please open the Odisha Govt. E-Diary Application. First page of the application will be the login page. Existing users can login using their username and password.



3.1 New / First-time users

New users (New / First-time users) have to register to create username and password by clicking on the Register Button on the same screen.



- If you are a Government Officer please Click on *Govt. Employee* tab. Fill up the registration form. The fields marked * are mandatory.



- If you are citizen, please Click on *Citizen* tab. Fill up the registration form. The fields marked * are mandatory.

Remember your Username and Password for using the E-Diary Application

- After filling up the necessary fields, click on Submit button to get registered. After success “*Registration Successful*” message will be shown.
- After successful registration, the page will be redirected to Login page.

3.2 For Registered Users :

- Enter your user- name & password to login to the E-diary application.



- If you have forgotten your password, then click on Forgot Password to get redirected to Forgot Password Page. In the "Forgot Password" page:
  a. Enter your mobile number and click on Send OTP button.
  b. OTP will be received on your registered mobile number.
  c. Fill the OTP and click on Submit
  d. Then enter your New password and Confirm password.
  e. If the password is reset, a success message "Password Changed Successfully" will be displayed and then redirected to Login page again to start using the application.

4. After Successful Login

- You will find your User Name in the right top corner of page. 
- Click on the top or bottom right corner to move to see Govt. Calander. (the First page of E- diary.)



- On the Calander page Click on top or bottom right corner to move to Content page which is also called as "Home Page" on this E- diary Application.



You can see a Menu button once you successfully logged in to the application which is available on the bottom right corner with three straight horizontal line in Green Color

By clicking on the Menu button, you can find/select the specific activity you want to carry out
OR You may click on top or bottom right corner to move to see key activities on the dashboard page .

5. Activities that can be carried out in this E-Dairy application

- One can write/take notes on a specific date of diary pages .(Like regular diary writing)
- You can see your own E-dairy Calendar
- You can schedule meetings for yourself and same will be integrated with your E-dairy calendar
- Your Google calendar or Microsoft/Outlook Calendar can also be integrated with your E-dairy Calendar
- You can take quick notes on the "Notes pages" of this application.
- You can find important links, tourist destinations, Leave account , pay particulars .
- You can search for Individual/Office details in the government directory of this E-dairy.
- You can find District information on this E-diary application.

6. Menu button has following quick links to Application features:


Home Page : It will take you to the content page/dashboard page of the diary.


Diary : It will take you to the current date of diary writing page. You can start writing diary.


Calendar : By clicking on this , you can go to the calendar page of diary with current month activities listed . This will display Integarted calendar (Your google , outlook and Dairy Calendar)


Notes : You can take quick notes on this page for future refence .


Event Scheduler : You can view and schedule all your meeting and events here.


Important Links : It will redirect to important link page where user can find important URL posted under E-Dairy application.


Add Google / Outlooks Account : It will allow you to add your Google and Outlook/Teams Calendars to sync with E -Dairy .


Change Theme : It will allow you change the theme/color of your E -Dairy.


This allows to go to the previous page


This allows to go to the next page


You can close your dairy once you click on this


This button will be used to logout from the E-Diary Application.

7. Page-wise Details And Important Activity Explained

7.1 Homepage / Content Page

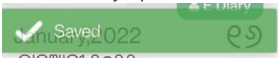


- Content page is the index page of Digital Diary.
- You can click on any subject content and it will redirect to the respective page. Each page heading is listed here along with its page numbers.

7.2 Personal Information



- This page should be filled up your personal details like Office address, Telephone no., Bank Details, PAN, Vehicle details etc. and Click on Save & Update button to save the details.
- After successful save, a success message *Personal Information Saved Successfully* will be shown.



7.3 Diary Activity

- Click on the Diary button to go to the writing page (current date) of digital diary .
- First line of the diary should be used for writing the heading. This heading will be displayed in your E-Diary calendar.
- No limitation on number of lines that can be used to write the details of your content.
- After filling up the content, click on Save button. 

- A success message *Saved* will appear after the writing page is saved. 
- After saving the Diary content , you can click on Share option to share the diary details via WhatsApp. 

- The diary pages can be flipped (go to different dates) by clicking on the right corners of the diary pages.



- You can write both in English as well in in Odia Or any supported language of your key board.

7.4 Schedule your Events/Meetings.

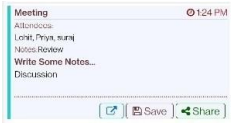
- Click on the Event Scheduler button given under expanded Menu button.
- It will be redirected to the your event scheduler page.
- Fill up the meeting Name, then choose the meeting date and time, then write the attendees' (who will attend the meeting along with you) name and write some notes if you want.
- Click on Save button . The meeting will be saved. Save

7.5 List/View your Scheduled Events/Meetings

- Click on Scheduled Events to go to the list of see events/meetings that you have scheduled. Here the list of date wise events/meetings are shown.



- Click on any events/meetings, the details of the event will be shown.
- You can again add more details of the notes part of any Meeting . Once you update , click on "Save" button to save the meeting. Save



- The meeting details can be shared via WhatsApp by clicking on the share button. Share
- A link will be shared and one can see the details by clicking on the link.

7.6 Your Today's Schedules

- You can see all your schedules of today.



- Click on each one to get the expanded details of the meeting/events.



7.7 Take Your Notes

This is primarily used for noting down some discussion points or any other notes besides diary writing.

- Click on the Note button to come to the first page of the note section.
- First line of the note is used for writing the heading.
- No limitation on number of lines that can be used to write the details of your content.

- After filling up the content, click on Save button.
- A success message *Notes added successfully* will appear after the data is saved. 

- The note pages can be flipped by clicking on the corners of the pages.

7.8 How to View your detailed calendar

- Click on the Calendar to view the Calendar page.
- By default, the current month calendar is displayed. The calendar will show Public Holidays, Optional Holidays, Diary heading, meetings, Google & Outlook events.



- Click on the diary event to get re-directed to the concerned diary page.
- Clicking on LIST will show week events. 

- If navigated to other months, click on TODAY to return to the current month view. 

- The forward arrow button show the next month and backward arrow button show the previous month. 
- On Clicking Sync button, All e-diary data will sync to your Gmail and outlook account also data which are added in the calendar of Gmail / Outlook will sync to e-diary calendar. 

7.9 How to link your Google or Microsoft account

Click on Link your Google/Microsoft Account button to open your Add Account.

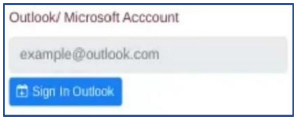
7.9.1 *Google account* before signing in:-

- After clicking on Sign-In with google button a pop-up will appear in which the user can provide his/her username and password to sign in.
- After signing in, the user account is been successfully added and the username will be displayed in the text field with a sign-out button.



7.9.2 Outlook account before signing in:-

- After clicking on Sign-In with the outlook button a pop-up will appear in which the user can provide his/her username and password to sign in.
- After signing in, the user account is been successfully added and the username will be displayed in the text field with a sign-out button.



7.9.3 If Google / Outlook account is already logged in:-

- The username is displayed in the text field with a sign-out button in the link your Google/Outlook Account popup.
- The user can sync his/her Diary and Scheduled event to google calendar .
- If some event is been added to google calendar, the event will also display on the Odisha govt diary calendar.

7.10 General Information about Odisha

- Click on General Info. about Odisha button to know the demographic information of Odisha

7.11 Important Websites

- Click on Websites to view the list of important websites of India as well as Odisha.

7.12 Emails

- Click on Emails to view the list of important Email addresses of Governor, Chief Minister, OLA, Ministers, Departments, District Collectors, Superintendents of Police, Commissionerate of Police, Range DIGs of Police, High Court and other Govt. of Odisha officers.

7.13 Pin code

- Click on Pincode to view the list of pin codes of Odisha. Click on any district to view its respective pin codes.

7.14 STD code

- Click on STD codes to view the list of STD codes of Districts and Sub-Division Headquarters of Important links
- Click on Important Links to view the list of important website links of Odisha.

7.15 Distance from District Headquarters

- Click on Distance of District HQ to view the distance of Headquarters & important places by road from the state capital (Bhubaneswar).

7.16 Directories

I. Governor's Secretariat:
   - Click on Governor's Secretariat option to get redirected to the Governor's Secretariat page.
   - This page is having the list of officers name, designation, phone(O), phone(R) & email id.
   - Also we can filter by designation, name, phone(O), phone(R) & email id.

II. Office of the Chief Minister:
    a. Click on Office of the Chief Minister option to get redirected to the Office of the Chief Minister page.
    b. This page is having the list of officers name, designation, phone(O) & phone(R).

    c. Also we can filter by designation, name, phone(O) & phone(R).

III. Members of Rajya Sabha:
    a. Click on Members of Rajya Sabha option to get redirected to the Members of Rajya Sabha page.
    b. This page is having a list of members' name, permanent addresses with telephone numbers, local addresses with telephone numbers & email id.

    c. Also we can filter by members name, permanent address with telephone number, local address with telephone number & email id.

IV. Members of Lok Sabha:
    a. Click on the Members of Lok Sabha option to get redirected to the Members of Lok Sabha page.
    b. This page is having a list of members' names, constituencies, permanent addresses, present addresses with telephone numbers & email id.

    c. Also we can filter by members name, constituency, permanent address, present address with telephone number & email id.

V. Members of Odisha Legislative Assembly:
    a. Click on Members of Odisha Legislative Assembly option to get redirected to the Members of Odisha Legislative Assembly page.
    b. This page is having the list of elected members' names, no & name of constituency, phone(R)/mob & email id.

    c. Also we can filter by elected members' name, no & name of constituency, phone(R)/mob & email id.

VI. Government Functionaries:
    a. Click on the Government Functionaries option to get redirected to the Government Functionaries page.

    b. This page shows the list of government functionaries with officers' name, designation, phone(O), phone(R)/mob & email id.

    c. Also we can filter by officers name, designation, phone(O), phone(R)/mob & email id.

VII. Departments:

a. Click on the Departments option to get redirected to the Departments page.

b. This page lists all the departments of the Odisha Government along with the officers' name, designation, phone(O), phone(R)/mob & email id.

c. Also we can filter by officers name, designation, phone(O), phone(R)/mob & email id.

VIII. Senior Officers:

a. Click on the Senior Officers option to get redirected to the Senior Officers page.

b. This page is having the list of officers' names, designation, phone(O), phone(R) & email id.

c. Also we can filter by officers name, designation, phone(O), phone(R) & email id.

IX. Office of the Lokayukta:

a. Click on the Office of the Lokayukta option to get redirected to the Office of the Lokayukta page.

b. This page is having the list of officers' names, designation, phone(O), phone(R)/mob & email id.

c. Also, we can filter by officers name, designation, phone(O), phone(R)/mob & email id.

X. Collectors:

a. Click on the Collectors option to get redirected to the Collectors page.

b. This page is having the list of collectors' names with mobile number, district, STD code, phone(O), phone(R), FAX & email id.

c. Also, we can filter by collectors name with mobile number, district, STD code, phone(O), phone(R), FAX & email id.

XI. Superintendent of Police:

- Click on Superintendent of Police option to get redirected to the Superintendent of Police page.
- This page is having the list of officers' names, district/place, phone(O), phone(M) & email id.
- Also, we can filter by officers name, district/place, phone(O), phone(M) & email id.

XII. VC's of Universities:

a. Click on the VC's of Universities option to get redirected to the VC's of Universities page.

b. This page is having the list of officers' names, designation, phone(O), phone(R)/mob & email id.

c. Also we can filter by officers name, designation, phone(O), phone(R)/mob & email id.

XIII. Others:

- Click on Others option to get redirected to the Others page.
- This page is having the list of other officers name, designation, phone(O), phone(R)/mob & email id.
- Also we can filter by officers name, designation, phone(O), phone(R)/mob & email id.

7.17 Tourist Destinations

- Click on Tourist Destinations (Can also be redirected from the side menu) to go to the Tourist destination page.
- Here list of different tourist places are shown categorized by Districts.
- Click on the Place name to view the details. Click on the photo to get the details in a pop-up.

7.18 Leave account

Click on Leave Account to go to Leave Account Page.
Here the user can add their leave details. To add a leave :

1. Enter the date of Leave application (Date on which the application is submitted).
2. Nature of Leave taken (Sick/Casual etc).
3. Period of leave From (Date from which leave is needed).
4. Period of Leave to (Date till which leave is needed).
5. Remarks (Add remarks if needed)
6. Click on Save button to save the leave details.
7. The list of added leave records can be viewed under *All Leave* Section.

7.19 Pay Particulars

- Click on the **Pay Particulars** option to view the Particulars page. Pay Particulars 446
- Here enter your monthly particulars by entering their G.P., Special Pay, D.A. & House Rent Allowance, G.P.F (S), G.P.F (R), H.B./SPL. H.B. Advance, Motor Car/Cycle Advance, Professional TAX, I TAX, GIS/LIC/PLI, House Rent Recovery & Other Recovery.

- Then click on Save button to save the entered data.
- Successfully saved message will be displayed.

7.20 2023 & 2025 Calendars

- Clicking on 2023 & 2025 Calendars will redirect to View page of Previous and next year calendars.



HANDBOOK FOR INQUIRY OFFICERS AND DISCIPLINARY AUTHORITIES



2013

GOVERNMENT OF INDIA

INSTITUTE OF SECRETARIAT TRAINING AND MANAGEMENT
(DEPARTMENT OF PERSONNEL & TRAINING)
MINISTRY OF PERSONNEL PUBLIC GRIEVANCES & PENSIONS

उमेश कुमार
Umesh Kumar
निदेशक
Director
Tel.: 26185308, 26185309
Telefax : 26104183

सत्यमेव जयते

सचिवालय प्रशिक्षण तथा प्रबन्ध संस्थान
INSTITUTE OF SECRETARIAT TRAINING & MANAGEMENT
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSIONS
भारत सरकार (GOVERNMENT OF INDIA)
प्रशासनिक ब्लाक, जे.एन.यू. कैम्पस (ओल्ड)
Administrative Block, J.N.U Campus (Old)
नई दिल्ली-110067
www.istm.gov.in

FOREWORD

In pursuance of the recommendations of the Committee of Experts which was set up to review the procedure of Disciplinary/Vigilance Inquiries, the Department of Personnel and Training (DOPT) had directed the Institute of Secretariat Training and Management to bring out an updated Handbook for Inquiry Officers and Disciplinary Authorities. Shri Sethu Ramalingam an Ex-Faculty of ISTM in vigilance matters who was entrusted with this work submitted the draft of the handbook well in time. Though every care has been taken to ensure the accuracy and correctness of the contents in the handbook, yet, in case the readers come across any errors or omissions, they may kindly bring the same to the notice of this Institute. Any comments or suggestions for the improvement of this handbook will be gratefully appreciated.

2. I am very happy to place this handbook in the hands of various users and readers. This Institute is thankful to the consultant and concerned divisions of DOPT for guiding the process of preparation of the handbook.

Umesh Kumar

(Umesh Kumar)
Director
New Delhi

Date: 25.09.2013

HANDBOOK FOR INQUIRY OFFICERS AND DISCIPLINARY AUTHORITIES

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CHAPTER – 1

DISCIPLINARY PROCEEDINGS: CONTEXT AND OVERVIEW

1. Human resource is perhaps the most valuable asset of any organisation. It is the human resource which exploits other resources in the organisation so as to achieve the organisational objectives. The aim of the Human Resource Department, by whatever name it is known such as Personnel Department, P&IR, etc, is to get the best out of the human resource of the organisation. For achievement of this purpose, there are many sub-systems in the Human Resource Department such as Grievance Handling, Counseling, Performance Appraisal, Career Planning, Training & Development, etc. Reward and Punishment system is one of the sub-systems under the Human Resource System. It is essential that every organisation, whether government or semi-government or private, should have a well established reward and punishment system to ensure that the people are made to work towards the fulfillment of the organisational goals. While the reward system will encourage the employees to work better towards the achievement of organisational goals, punishment system is used to prevent people from working against the organisational goals.

2. Misconduct, or non-conforming behaviour, as it is sometimes called, can be tackled in many ways such as counseling, warning, etc. In extreme cases such as, criminal breach of trust, theft, fraud, etc. the employer is also at liberty to initiate action against the employee, if the misconduct of the latter falls within the purview of the penal provisions of the law of the land. However such proceedings generally conducted by the State agencies, are time consuming and call for a high degree of proof. In addition to the above option, the employer also has an option to deal with the erring employee within the terms of employment. In such an eventuality, the employee may be awarded any penalty which may vary from the communication of displeasure, to the severance of the employer-employee relationship i.e. dismissal from service. Disciplinary authorities play a vital role in this context. Efficiency of the disciplinary authorities is an essential pre-requisite for the effective functioning of the reward and punishment function, more specifically the latter half of it.

3. There was a time when the employer was virtually free to hire and fire the employees. Over a period of time, this common law notion has gone. Today an employer can inflict punishment on an employee only after following some statutory provisions depending upon the nature of the organisation. Briefly, the various statutory provisions which govern the actions of different types of organisation are as under:

(a) **Government:** Part XIV of the Constitution relates to the terms of employment in respect of persons appointed in connection with the affairs of the State. Any action against the employees of the Union Government and the State Governments should conform to these Constitutional provisions, which confer certain protections on the

Government servants. These provisions are applicable only to the employees of the various Ministries, Departments and Attached and Subordinate Offices. Further, the employees, being citizens of the country also enjoy Fundamental Rights guaranteed under Part III of the Constitution and can enforce them though the Writ jurisdiction of the Courts. In addition to the constitutional provisions, there are certain rules which are applicable to the conduct of the proceedings for taking action against the erring employees. Central Civil Services (Classification, Control, and Appeal) Rules 1965 cover a vast majority of the Central Government employees. Besides, there are also several other Rules which are applicable to various sections of the employees in a number of services.

(b) **Semi Governmental Organisations**: By this, we mean the Public Sector Undertakings and Autonomous Bodies and Societies controlled by the Government. Provisions of Part XIV of the Constitution do not apply to the employees of these Organisations. However, as these organisations can be brought within the definition of the term 'State' as contained in Article 12 of the Constitution, the employees of these organisations are protected against the violation of their Fundamental Rights by the orders of their employer. The action of the employer can be challenged by the employees of these organisations on the grounds of arbitrariness, etc. These organisations also have their own sets of rules for processing the cases for conducting the disciplinary proceedings against their employees.

(c) **Purely private organisations**: These are governed by the various industrial and labour laws of the country and the approved standing orders applicable for the establishment.

4. Although the CCS (CCA) Rules 1965 apply only to a limited number of employees in the Government, essentially these are the codification of the Principles of Natural Justice, which are required to be followed in any quasi judicial proceedings. Even the Constitutional protections which are contained in Part XIV of the Constitution are the codification of the above Principles. Hence, the procedures which are followed in most of the Government and semi-governmental organisations are more or less similar. This handout is predominantly based on the CCS (CCA) Rules 1965.

5. Complexity of the statutory provisions, significance of the stakes involved, high proportion and frequency of the affected employees seeking judicial intervention, high percentage of the cases being subjected to judicial scrutiny, huge volume of case law on the subject - are some of the features of this subject. These, among others have sparked the need for a ready reference material on the subject. Hence this handbook.

CHAPTER – 2

ROLE OF DISCIPLILNARY AUTHORITIES

1. Who is Disciplinary Authority?

The term Disciplinary Authorities refers to such authorities who have been entrusted with powers to impose any penalty on the employees. In respect of the organizations falling under the purview of CCS (CCA) Rules 1965, the term Disciplinary Authority is defined in Rule 2 (g) of the CCA Rules as the authority competent to impose on a government servant any of the penalties specified in Rule 11. In this Handbook, CCS (CCA) Rules 1965 is henceforth referred to as "the Rules"

Disciplinary authority is defined with reference to the post held by the employee. Various Disciplinary authorities are specified in Rule 12 of the Rules. Thus there may be more than one disciplinary authority in every organization.

2. What are the kinds of Disciplinary Authorities?

Normally, there are two categories of Disciplinary Authorities viz. those who can impose all penalties on the employees and the authorities who can impose only minor penalties.

3. What are the powers and responsibilities of the Disciplinary Authorities?

Although it is not explicitly stated anywhere, main responsibility of the Disciplinary Authority is to ensure discipline in the organization. Towards this, the disciplinary authorities are required to identify acts of indiscipline and take appropriate remedial action such as counseling, cautioning, admonition, imposition of penalties, criminal prosecution, etc.

4. What is the relationship between Appointing Authority and Disciplinary Authority?

Appointing Authorities are empowered to impose major penalties. It may be recalled that Article 311 clause (1) provides that no one can be dismissed or removed from service by an authority subordinate to the Authority which appointed him. In fact under most of the situations, the powers for imposing major penalties are generally entrusted to the Appointing Authorities. Thus Appointing Authorities happen to be disciplinary authorities. However there may be other authorities who may be empowered only to impose minor penalties. Such authorities are often referred to as lower disciplinary authorities for the sake of convenience.

In this handbook, the term Disciplinary Authority has been used to signify any authority who has been empowered to impose penalty. Thereby the term includes appointing authorities also.

5. How to decide the Appointing Authority, when a person acquires several appointments in the course of his/her career?

CCA Rule 2(a) lays down the procedure for determining the Appointing Authority in respect of a person by considering four authorities. Besides, it must also be borne in mind that Appointing Authority goes by factum and not by rule. i.e. where an employee has been actually appointed by an authority higher than the one empowered to make such appointment as per the rules, the former shall be taken as the Appointing Authority in respect of such employee.

6. What should be the over-all approach of the Disciplinary Authority?

Disciplinary authorities are expected to act like a ***Hot Stove*****,** which has the following characteristics:

- Advance warning – One may feel the radiated heat while approaching the Hot stove. Similarly, the Disciplinary Authority should also keep the employees informed of the expected behavior and the consequences of deviant behavior.
- Consistency: Hot stove always, without exception, burns those who touch it. Similarly, the disciplinary authority should also be consistent in approach. Taking a casual and lenient view during one point of time and having rigid and strict spell later is not fair for a Disciplinary Authority

- Impersonal: Hot stove treats all alike. It does not show any favouritism or spare anybody. Similarly, the disciplinary authority should treat all employees alike without any discrimination. [You may feel that past good conduct of the delinquent employee is taken into account while deciding the quantum of penalty. This is not in contravention of the rule of impersonal approach. Even past conduct has to be taken into account in respect of all the employees, without discrimination.]

- Immediate action: Just as the hot stove burns the fingers of those who touch it without any time lag, the disciplinary authority is also expected to impose penalty without delay. This will make the delinquent employee link the misconduct to the penalty; besides it also sends a message that misconduct will be appropriately dealt with.

  [The rule is attributed to Douglas McGregor who is better known for his 'X' and 'Y' theories of Management]

7. How to find out who is the Disciplinary Authority?

Firstly, it must be remembered that the Disciplinary authority is determined with reference to the employee proceeded against. Schedule to the Rules 1965 lay down the details of the disciplinary authorities in respect of various grade of employees in different services in the Government. The President, the Appointing Authority, the Authority specified in the Schedule ot the Rules (to the extent specified therein) or by any other authority empowered in this behalf by any general or special order of the President may impose any fo the Penalties specified in Rule 11.

Appointing Authority as mentioned in the Schedule must be understood with reference to rule2 (a) of the Rules. The question as to who is the appropriate disciplinary authority must be raised and answered not only while issuing charge sheet but also at the time of imposing penalty because there might have been some change in the situation due to delegation of powers, etc. in the organization.

8. What are the functions of the Disciplinary Authority?

Disciplinary authority is required to discharge the following functions:

(a) Examination of the complaints received against the employees

(b) Deciding as to who is to be appointed as the investigating authority

(c) Taking a view as to whether there is any need to keep the delinquent employee under suspension

(d) Taking a view on the preliminary investigation report and deciding about the future course of action thereon, such as warning, training, counseling, initiation of major or minor penalty proceeding, prosecution, discharge simpliciter, etc.

(e) Consultation with the Central Vigilance Commission (CVC) where necessary

(f) Deciding whether there is any need to issue of charge sheet or penalty may be imposed dispensing with inquiry under the appropriate provision

(g) Issue of charge sheet where necessary - Rule 14(3)

(h) In the case of minor penalty proceedings, deciding, either suo motu or based on the request of the delinquent employee, as to whether it is necessary to conduct a detailed oral hearing.

(i) In the case of minor penalty proceedings, forming tentative opinion about the quantum of penalty based on the representation of the delinquent employee, if any, and ordering for a detailed oral hearing where necessary.

(j) After issue of charge sheet, deciding as to whether there is any need to conduct inquiry, or the matter may be closed, or the penalty can be imposed, based on the unambiguous, unconditional and unqualified admission by the delinquent employee.

(k) Passing final order imposing penalty or closing the case, based on the response of the delinquent employee

(l) Appointment of Inquiry Authority and Presenting Officer, where necessary

(m) Taking a view on the request, if any, of the delinquent employee for engagement of a Legal Practioner as Defence Assistant

(n) Making originals of all the listed documents available to the Presenting Officer so that the same could be presented during the inspection of documents.

(o) Examination of the inquiry report to decide as to whether the same needs to be remitted back to the inquiry authority - Rule 15(1)

(p) Deciding as to whether the conclusion arrived at by the Inquiring Authority is acceptable and to record reasons for disagreement if any – Rule 15(2)

(q) Consultation with CVC or UPSC where necessary

(r) Forward the inquiry report to the delinquent employee together with the reasons for disagreement, if any and the recommendations of the CVC where applicable - Rule 15(2)

(s) Considering the response of the delinquent employee to the inquiry report and the reasons for disagreement and taking a view on the quantum of penalty or closure of the case. Rule 15(2)A

(t) Pass final order in the matter – Rule 15(3)

(u) On receipt of copy of the appeal from the penalized employee, prepare comments on the Appeal and forward the same to the Appellate Authority together with relevant records. - Rule 26(3)

9. What happens if any of the functions of the Disciplinary Authority has been performed by an authority subordinate to the disciplinary authority?

Where a statutory function has been performed by an authority who has not been empowered to perfrom it, such action without jurisdiction would be rendered null and void. The Hon'ble Supreme Court in its Judgment dated 5th September 2013, in Civil Appeal No. 7761 of 2013 (Union of India & Ors. Vsd. B V Gopinathan) has held that the statutory power under Rule 14(3) of the CCA rule has necessarily to be performed by the Disciplinary Authority. as under:

> *"**49.** Although number of collateral issues had been raised by the learned counsel for the appellants as well the respondents, we deem it appropriate not to opine on the same in view of the conclusion that the charge sheet/charge memo having not been approved by the disciplinary authority was non est in the eye of law."*

10. What knowledge is required for the efficient discharge of the duties in conducting disciplinary proceedings?

Disciplinary Authority is required to be conversant with the following:

- Constitutional provisions under Part III (Fundamental Rights) and Part XIV (Services Under the Union and the States)
- Principles of Natural Justice

- CCS(CCA) Rules 1965 or the relevant rules applicable to the organization
- Government of India Instructions relating to disciplinary proceedings
- Vigilance Manual
- Instructions of CVC and UPSC relating to disciplinary proceedings
- Case law relating to disciplinary proceedings

Endeavour in this handbook is to impart the above knowledge

CHAPTER – 3

CONSTITUTIONAL PROVISIONS RELATING TO DISICPLINARY PROCEEDINGS

1. Part XIV of the Constitution relates to '*Services Under the Union and the States*', wherein, Articles 309, 310 and 311 are relevant to disciplinary proceedings. Article 309 is an enabling provision which gives power to the legislature to enact laws governing the conditions of service of the persons appointed in connection with the affairs of the state. Proviso to this Article provides that pending the enactment of the laws, the President may frame rules for the above purpose. The laws as well as the Rules to be framed for the purpose must be 'subject to the provisions of the constitution'. CCS (CCA) Rules 1965 as well as several other service rules have been framed under the proviso to Article 309 of the Constitution.

2. Article 310 of the Constitution contains what is known as the *Pleasure Doctrine*. It provides that the term of appointment of the union Government Servants shall depend upon the pleasure of the President. In fact the provision applies to all members of defence services, members of Civil Services, members of All India Services, holders of Civil Posts and holders of defence posts. The same Article also provides that the pleasure of the President can be over ridden only by the express provisions of the Constitution and nothing else. Thus, in case there is any express provision relating to the tenure of appointment of a Government Servant, the same will prevail; otherwise, the tenure of appointment will depend upon the pleasure of the President.

3. Restriction on the Pleasure Doctrine is provided in a number of provisions of the Constitution in respect of high level functionaries. Some of the examples are Article124 [Tenure of Supreme Court judges], Article 148(2) [Tenure of High Court judges] Article 324 [The Chief Election Commissioner, Article 317 [Chairman and members of public service commission] who are holders of civil posts.

4. In respect of the multitude of ordinary Government Servants, a restriction on the Pleasure of the President is contained in the immediately following Article viz. Article 311. The first thing to be noted about Article 311 is that it does not apply to the defence personnel. The Supreme Court has clarified that even the civilians working in connection with the defence are not covered by the provisions of Article 311. It is also significant that even the rules framed under proviso to Article 309 cannot provide the protection under Article 311, to those employees who are not entitled to the protection under the said Article. In this connection, the following observations by the Hon'ble Supreme Court in Union of India and another Vs. K.S. Subramanian [JT1988(4)SC681, 1989 Supp(1)SCC331] is relevant

> *11. It was, however, argued for the respondent that 1965 Rules are applicable to the respondent, first, on the ground that Rule 3(1) thereof itself provides that it would be applicable, and second, that the Rules were framed by the President to control his own pleasure doctrine, and therefore, cannot be excluded. This contention, in our opinion, is basically faulty. The 1965 Rules*

among others, provide procedure for imposing the three major penalties that are set out under Article 311(2). When Article 311(2) itself stands excluded and the protection thereunder is withdrawn there is little that one could do under the 1965 Rules in favour of the respondent. The said Rules cannot independently play any part since the rule making power under Article 309 is subject to Article 311. This would be the legal and logical conclusion

5. The ruling in the above extract should not be misconstrued to mean that any penalty imposed on a defence civilian by following the procedure prescribed in CCA Rules is liable to be set aside for the simple reason that the above rules do not apply to defence Civilians. Unless a different rule is applicable for a defence civilian and unless the aggrieved person establishes that application of CCA Rules has caused prejudice to him, the application of the CCA Rules cannot be a ground for invalidating the penalty imposed. Hon'ble Supreme Court in the case of Director General of Ordnance Services and others Vs. P.N. Malhotra 1995 AIR 1109, 1995 SCC Supl. (3) 226 reversed the decision of the Hon'ble Tribunal and held that -

"10. The learned counsel for the appellants submits that the respondent cannot be said to have suffered any prejudice by following the procedure prescribed by 1965 Rules. He submits that the said Rules are nothing but a codification of the principles of natural justice. Indeed, it is submitted, they are more specific, more elaborate and more beneficial to the employee than the broad principles of natural justice. If we assume for the sake of argument that the respondent was entitled to insist upon an enquiry before he could be dismissed, we must agree with the submission of the learned counsel for the appellants. …."

6. Article 311 basically grants two protections to the civilian government servants (other than the defence civilians, of course). The two protections relate to **who** and **how**. The first part of the Article provides that no person shall be dismissed or removed from service by an authority subordinate to the one by which he was appointed. Thus, the protection is that, before being sent out of service, a Government servant is entitled to have his case considered by the authority who is equal in rank to the one who appointed him to the service. If the penalty of dismissal or removal from service is imposed by an authority who is lower in rank than the Appointing Authority, the same will be unconstitutional. The following are some of the practical difficulties which may arise in complying with this provision:

(a) The employee concerned may be holding a post different from the one in which he was initially recruited and his promotion to the present grade might been made by an authority other than the one who initially recruited him to service. Who is appointing authority in respect of such an employee?

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(b) The power for making appointment to a grade keeps on changing. Twenty years ago, the power of making appointment to a grade was exercised by an officer of a certain level. Consequent to the decentralisation of powers, the power for making appointment to the same grade is presently vested in a lower level officer. Is there any restriction on the exercise of the power of dismissal by the lower level officer?

(c) A post has been abolished consequent to some re-organisation re-structuring of certain departments. The post so abolished was the Appointing Authority in respect of a number of levels. Who can exercise the powers of dismissal in such cases?

The answers to these questions are contained in Rule 2(a) of the CCA Rules and other statutory rules which have been framed under the Proviso to Article 309.

7. The second protection granted by Article311 is available in Clause 2 of the Article and it states how a Government Servant can be dismissed, or removed from service or reduced in rank. It provides that no one can be dismissed or removed from service or reduced in rank except *after an inquiry***.** The same article also indicates that the above mentioned inquiry must satisfy the following two conditions:

(a) The individual concerned must be informed of the charges.

(b) Must be granted a *reasonable opportunity* of being heard in respect of those charges.

8. The phrase reasonable opportunity has not been defined in the Constitution; but the courts have clarified through a number of decisions that this implies that the accused has a right to:

- know the charge,
- know the evidence led by the Disciplinary Authority in support of the charge
- inspection of documents,
- cross examine the witness deposing for the Disciplinary Authority
- lead evidence in defence, etc.

9. Another important question relating to the applicability of Article 311 is, whether the article provides protection to permanent employees only or even the temporary employees are entitled for the protection. Although Article 311 does not specifically state as to whether the provisions are applicable to temporary employees also, the Supreme Court has clarified about the applicability of the protection. The law laid down by the Hon'ble Supreme Court in the case of Parshottam Lal Dhingra Vs Union of India [AIR1958 SC 36] more than half a century ago is still applicable. As per the case law on the subject, the protection is available under any one of the under mentioned circumstances:

(a) Where there is a right to hold the post

(b) Where there is visitation of evil consequences

10. All permanent employees have a right to post and hence are entitled for this protection. As regards the temporary employees, even in their case, a reasonable opportunity of defence will have to be afforded if they are being visited by evil

consequences. Thus, if a temporary employee is discharged from service by giving him one month notice, without assigning any reason, the same may be permissible. If the order of discharge mentions any reasons having a bearing on the conduct or the competence of the employees, in such cases an inquiry will be necessary. In short, even probationers will be entitled to the protection of inquiry, if the order of discharge contains a stigma. As pointed out by the Hon'ble Supreme Court in the following passage in the case of Mathew P. Thomas Vs. Kerala State Civil Supply Corpn. Ltd. and Ors. [JT2003(2), (2003)3SCC263], the issue continues to be difficult to determine:

11. An order of termination simplicitor passed during the period of probation has been generating undying debate. The recent two decisions of this Court in Deepti Prakash Banerjee v. MANU/SC/0101/1999: Satyendra Nath Bose National center for Basic Sciences, Calcutta and Ors. [1999]1SCR532 and Pavanendra Narayan Verma v. MANU/SC/0705/2001: Sanjay Gandhi PGI of Medical Sciences and Anr. (2002) ILLJ690SC, after survey of most of the earlier decisions touching the question observed as to when an order of termination can be treated as simplicitor and when it can be treated as punitive and when a stigma is said to be attached to an employee discharged during period of probation. The learned counsel on either side referred to and relied on these decisions either in support of their respective contentions or to distinguish them for the purpose of application of the principles stated therein to the facts of the present case. In the case of Deepti Prakash Banerjee (supra), after referring to various decisions indicated as to when a simple order of termination is to be treated as "founded" on the allegations of misconduct and when complaints could be only as motive for passing such a simple order of termination. In *para 21 of the said judgment a distinction is explained, thus:-*

> *"21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such circumstances, the allegations would be a motive and not the foundation and the simple order of termination would be valid."*

12. Article 311 also provides that under certain circumstances, a government servant may be dismissed or removed from service or reduced in rank without an inquiry. These are contained in the second proviso to Article 311 (2). The circumstances under which the protection under Article 311 Clause 2 does not apply are as under:

(a) Where the penalty is being imposed on the ground of conduct which has led to his conviction on a criminal charge; or.

(b) Where the disciplinary authority is satisfied, for reasons to be recorded, that it is not reasonably practicable to hold an inquiry in the case; or

(c) Where the President is satisfied that in the interest of the security of the country it is not expedient to hold the inquiry.

13. It is also relevant to note that the special circumstance when penalty may be imposed on a Government Servant without Inquiry have been reproduced in Rule 19 of the CCS (CCA) Rules 1965.

14. There may be circumstances wherein a Government servant may be proceeded against in a criminal court. The criminal case might have been filed by the employer or the employee might have been tried for an offence he has committed in his private life. The provision mentioned above, grants power to the disciplinary authority to impose penalty without conducting inquiry if the Government servant has been convicted in a criminal case. In this connection, it is relevant to note that the standard of proof required in a criminal case is proof beyond reasonable doubt whereas in the departmental proceedings, the standard of proof is preponderance of probability. Thus if an employee has been held guilty in a criminal case, it would be much more easier to establish the charge in a departmental proceedings. Conducting a departmental inquiry after the employee has been held guilty in a criminal case would, therefore, be an exercise in futility. Hence the power granted by the Second Proviso to Article 311 may be availed and appropriate penalty may be imposed on the employee. It must, however, be noted that this provision only grants a power to the disciplinary authority to impose the penalty without inquiry when the employee has been convicted in a criminal case. It is not mandatory for the disciplinary authority to dismiss the employee whenever he has been convicted in a criminal case. The authority concerned will have to go thorough the judgment and take a decision depending upon the circumstances of the case. While taking recourse to this provision, the disciplinary authority is under an obligation to issue a show cause notice to the Government Servant as required under the proviso to Rule 19 of the CCA Rules. Besides, the quantum of penalty needs to be decided with due regard to the mandate of the Hon'ble Supreme Court that the right to impose penalty carries with it the duty to act justly. In this connection it is worthy to bear in mind the observation of the Hon'ble Supreme Court in its legendary judgment in the case of Shankar Das Vs. Union of India [AIR1985SC772, 1985(1)SCALE391, (1985)2SCC358, [1985]3SCR163, 1985(2)SLJ454(SC)]

> *6. The learned Magistrate First Class, Delhi, Shri Amba Prakash was gifted with more than ordinary understanding of law. Indeed he set an example worthy of emulation. Out of the total sum of Rs. 1,607.99 which was entrusted to the appellant as a Cash clerk, he deposited Rs. 1,107.99 only in the Central Cash Section of the Delhi Milk Scheme. Undoubtedly, he was guilty of criminal breach of trust and the learned Magistrate had no option but to convict him for that offence. But, it is to be admired that as long back as in 1963, when Section 235 of the CrPC was not on the Statute book and later refinements in the norms of sentencing were not even in embryo, the learned*

Magistrate gave close and anxious attention to the sentence which, in the circumstances of the case, could be passed on the appellant. He says in his judgment The appellant was a victim of adverse circumstances; his son died in February 1962, which was followed by another misfortune; his wife fell down from an upper storey and was seriously injured: it was then the turn of his daughter who fell seriously ill and that illness lasted for eight months. The learned Magistrate concluded his judgment thus :

> *Misfortune dodged the accused for about a year... and it seems that it was under the force of adverse circumstances that he held back the money in question. Shankar Dass is a middle aged man and it is obvious that it was under compelling circumstances that he could not deposit the money in question in time. He is not a previous convict. Having regard to the circumstances of the case, I am of the opinion that he should be dealt with under the Probation of Offenders Act, 1958.*

7. It is to be learned that despite these observations of the learned Magistrate, the Government chose to dismiss the appellant in a huff, without applying its mind to the penalty which could appropriately be imposed upon him in so far as his service career was concerned. Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the Government the power to dismiss a person from service on the ground of conduct which has led to his conviction on a criminal charge". But, that power, like every other power, has to be exercised fairly, justly and reasonably. Surely the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a non-parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since Clause (a) of the second proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty is to be imposed on a Government servant or the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts of this case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical.

15. Another occasion when the disciplinary authority may impose penalty on the employee without conducting any inquiry is when, the disciplinary authority, is satisfied, for reasons to be recorded, that it is not reasonably practicable to hold an inquiry. There are two conditions for invoking this provision viz. firstly, the disciplinary authority must be satisfied that it is not reasonably practicable to hold inquiry in a particular case and secondly, the authority must record the reasons for his decision. Although the Constitution does not require the communication of the reasons in the penalty order, it has been recommended in the judgments of the Supreme Court that it is desirable to communicate the reasons in the penalty order. This will obviate the prospects of the penalised employee contending that the reasons were fabricated after the issue of penalty order. It has been held in a number of decisions of the Hon'ble Supreme Court that orders imposing penalty under this clause will be invalid unless the reasons for dispensing with inquiry have been recorded.

16. In this connection, the following judgments of the Hon'ble Supreme Court are relevant:

(a) Reena Rani Vs. State of Haryana and Ors. 2012(3)SCALE519

(b) In Jaswant Singh v. State of Punjab [(1991) 1 SCC 362] the two-Judge Bench referred to the ratio of Union of India v. Tulsiram Patel [(1985) 3 SCC 398] and observed:

> The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer.

17. This provision can be of help during large scale violence, threat to the disciplinary authority or inquiry authority or the state witnesses, etc. Invoking this provision for mundane purposes such as avoiding delay, etc. may not be in order. Although the penalty order issued without inquiry may cause harm to the employee, the courts have held that the clause has been provided for the sake of a public good. In order to mitigate the harm done to the employee, the Hon'ble Supreme Court in the case of Union of India Vs Tulsiram Patel [AIR 1985 SC, (1985) 3 SCC 398] has ruled that in all such cases departmental appeal must be disposed of after giving him an opportunity of defence.

18. There is considerable divergence of opinion on the subject regarding the applicability of the above provision in cases of inability of the disciplinary authority to serve charge sheet because the whereabouts of the delinquent are not known. It is felt that the provision being contrary to the principles of Natural Justice, it would be appropriate to resort to them sparingly. In cases of prolonged unauthorized absence of the delinquent, it would be appropriate to publish the charge sheet in the local news paper and/or the web site of the organization, paste it in the door of the residence of the delinquent and the notice board of the organization, send through registered post and have proof of all these things before proceeding ex-parte against the delinquent.

19. Thirdly, an employee may be dismissed or removed from service or reduced in rank without inquiry whenever the President is of the opinion that in the interest of the security of the country it is not expedient to hold an Inquiry. In such cases, the decision to dispense with the inquiry is taken at the level of President and that too only on the ground of the security of the country. This provision may be useful in cases of espionage charges, etc. Here, the word President has been used in constitutional sense. The decision does not require personal approval of the President. It would be sufficient if the decision is taken by the Minister in charge.

20. The nature of the extra ordinary power granted by the provisions under the second proviso to Article 311(2) has been explained by the Hon'ble Supreme Court in the following terms in Union of India (UOI) and Anr. Vs. M.M. Sharma [JT2011 (4)SC22, (2011)11SCC293]

> *24. The power to be exercised under Clauses (a), (b) and (c) being special and extraordinary powers conferred by the Constitution, there was no obligation on the part of the disciplinary authority to communicate the reasons for imposing the penalty of dismissal and not any other penalty. For taking action in due discharge of its responsibility for exercising powers under Clause (a) or (b) or (c) it is nowhere provided that the disciplinary authority must provide the reasons indicating application of mind for awarding punishment of dismissal. While no reason for arriving at the satisfaction of the President or the Governor, as the case may be, to dispense with the enquiry in the interest of the security of the State is required to be disclosed in the order, we cannot hold that, in such a situation, the impugned order passed against the Respondent should mandatorily disclose the reasons for taking action of dismissal of his service and not any other penalty.*

21. Although the above mentioned provisions are applicable as such to the employees of the Ministries, departments and attached and subordinate offices only, yet the same are relevant to the employees of Public Sector Undertakings and the autonomous bodies as well. This is so, because similar provisions exist in the service rules relating to a number of PSUs and Autonomous bodies.

22. In addition to Part XIV of the Constitution (Articles 309 to 311), Part III of the Constitution is also relevant to the matter of disciplinary proceedings. Part III of the Constitution contains the Fundamental Rights. These are available against the actions of the State. The State is prohibited from denying the right to equality, etc. As per the current interpretation of Article 14, it strikes at the root of arbitrariness. Hence an employee affected by the arbitrary action of the State (which happens to be his employer) can file a writ petition alleging violation of the Right to equality. Article 21 of the Constitution provides right to life and liberty. It states that no one shall be deprived of his right to life and liberty except in accordance with the procedure established by law. According to the present interpretation of the Hon'ble Supreme Court, the word 'life' occurring in Article 21 of the Constitution does not denote mere existence. 'Life' as mentioned in Article 21 relates to a dignified and meaningful life. Hence, the deprivation of employment may amount to the deprivation of life. Hence Article 21 indirectly provides that no one can be deprived of his employment except in accordance with the procedure established by law. Besides, the Hon'ble Supreme Court has also stated in the case of Maneka Gandhi Vs Union of India (AIR 1978 SC 578) that the phrase 'procedure established by law mentioned in the above Article refers to a procedure which is just, reasonable and fair and not any procedure which is arbitrary, whimsical or oppressive. Hence, there is a requirement for the Governmental and semi-governmental organisations to ensure that the employees are not deprived of their employment (i.e. life) by an arbitrary procedure. Care must be taken to ensure that a just, reasonable and fair procedure is followed in the disciplinary proceedings.

CHAPTER – 4

PRINCIPLES OF NATURAL JUSTICE

Introduction

1. Initially, the term Natural Justice referred to certain procedural rights in the English Legal System. Over a period of time, the content of the term has expanded and presently it connotes some basic principles relating to judicial, quasi judicial and administrative decision making. These principles are believed and practiced by all civilized societies for millennia. The view that Natural Justice can be traced back to over thousand years is not an exaggeration. The following observation of Justice V Krishna Iyer in Mohinder Singh Gill Vs. Chief Election Commissioner [1978 AIR 851, (1978) 3 SCC 405, 1978 SCR (3) 272] is adequate proof of this statement:

> *It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of Authority. It is the bone of healthy government, recognised from earliest times and not a mystic testament of judge-made law. Indeed, from the legendary days of Adam-and of Kautilya's Arthasastra-the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the, roots of natural justice and its foliage are noble and not newfangled. Today its application must be sustained by current legislation, case- law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system. The dichotomy between administrative and quasi-judicial functions vis a vis the doctrine of natural justice is presumably obsolescent after Kraipak(1) in India and Schmit(2) in England.*

2. Traditionally English Law recognized two principles of natural justice viz. (i) *Nemo debet esse judex in propria causa* i.e No man shall be a judge in his own cause, or a suitor or the deciding authority must be impartial and without bias and (ii) *Audi alteram Partem* i.e. hear the other side, or no one can be condemned unheard. Over a period of time, a third principle has also emerged to the effect that *Final orders must be speaking orders* (Reasoned orders). The first and the third principles mentioned above may be perceived as the corollary of the basic principle that *Justice should not only be done but manifestly appear to have been done*

The Principles and general conditions

3. Based on the above, the following four may be stated as the Principles of Natural Justice:

(a) No one can be condemned unheard

(b) No one can be a judge in his own case

(c) Justice should not only be done but should manifestly appear to have been done

(d) Final order must be speaking order

4. The nature, aim and scope of these principles, the extent of their applicability, etc. have been eloquently articulated by Justice K S Hegde in the case of A K Kraipak Vs Union of India[(1969) 2 SCC 262]

> *(1) The rules of natural justice operate in areas not covered by any law validly made, that is, they do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceeding also, ….*
>
> *(2) The concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that enquiries must be held in good faith and without bias, and not arbitrarily or unreasonably, is now included among the principles of natural justice.*

Audi Alteram Partem

5. Observations of the Hon'ble Supreme Court in the following terms in the case of Maneka Gandhi Vs. Union of India, [1978 AIR 597, 1978 SCR (2) 621] establishes that the right to be heard is an inherent one and can be claimed even when not granted by statutory provisions:

> *It is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. This principle was laid down by this Court in the State of Orissa v. Dr. (Miss) Binapani Dei & Ors.[(1) AIR 1967 S.C. 1269 at 1271] in the following words*
>
> > *"The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore arise from the very nature of the function intended to be performed, it need not be shown to be super- ,added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a Person is made, the order is a nullity. That is a basic concept of the rule of law and*

importance thereof transcends the significance of a decision in any particular case."

6. Audi Alteram Patem which is basically a protection against arbitrary administrative action comprises within itself a number of rights. This rule implies that the accused has a right to

(a) know the charge
(b) inspect documents
(c) know the evidence
(d) cross examine witnesses
(e) lead evidence

7. In essence, the protections granted under Article 311 (2) of the Constitution as well the CCA Rules are codification of the above principle of natural justice.

8. As seen above, the principles of natural justice supplement law and not supplant law. Thus they can be exempt by express statutory provisions or by necessary implications. One instance of exemption by statutory provisions is exemption prescribed by the second proviso to Article 311 (2) which explicitly states that "this clause shall not apply".

9. In Maneka Gandhi Vs. Union of India, [1978 AIR 597, 1978 SCR (2) 621] the contention of the petitioner was that her Passport was impounded without giving her an opportunity of defence. Apparently, providing an opportunity of defence before impounding the Passport might defeat the very purpose of the action, because the moment the authorities initiate action for impounding the Passport, it would be possible for the person concerned to flee abroad on the strength of the Passport, which is yet to be impounded. There may be extra-ordinary situations when Post-decisional hearing might be provided instead of Pre-decisional hearing.

10. The components of the right to hearing as enumerated above are general in nature. They should not be perceived as inviolable essential ingredients of all administrative actions, In the case of Hira Nath Mishra and Ors Vs. Principal Rajendra Medical College, AIR 1973 SC 1260, (1973) IILLJ 111 SC, (1973) 1 SCC 805, three students had challenged the order of the Principal expelling them from the college for two academic sessions allegedly on charges of molestation of girl students. One of the submissions of the petitioners was that *"… the enquiry, if any, had been held behind their back; the witnesses who gave evidence against them were not examined in their presence, there was no opportunity to cross-examine the witnesses with a view to test their veracity…".* Repelling the submissions of the Appellants, the Hon'ble Supreme Court held as under:

"11. Rules of natural justice cannot remain the same applying to all conditions. We know of statutes in India like the Goonda Acts which permit evidence being collected behind the back of the goonda and the goonda being merely asked to represent against the main charges arising out of the evidence collected. Care is taken to see that the witnesses who gave statements would not be identified. In such cases there is no question of the witnesses being called and the goonda being given an opportunity to cross-

examine the witnesses. The reason is obvious. No witness will come forward to give evidence in the presence of the goonda. However unsavoury the procedure may appear to a. judicial mind, these are facts of life which are to be faced. The girls who were molested that night would not have come forward to give evidence in any regular enquiry and if a strict enquiry like the one conducted in a court of law were to be imposed in such matters, the girls would have had to go under the constant fear of molestation by the male students who were capable of such indecencies. Under the circumstances the course followed by the Principal was a wise one. The Committee whose integrity could not be impeached, collected and sifted the evidence given by the girls. Thereafter the students definitely named by the girls were informed about the complaint against them and the charge. They were given an opportunity to state their case. We do not think that the facts and circumstances of this case require anything more to be done.

12. There is no substance in the appeal which must he dismissed. The appeal is dismissed. There shall be no orders as to costs."

Rule of Bias

11. The principle that *No one can be a judge in his own case* is also known as the rule of bias. In essence, it implies that an interested party shall not play a role in decision making. General rule that Inquiry Officer should not be a witness in the proceedings is a corollary of this rule. In this connection, it is interesting to note the following observation of Justice Das in State of Uttar Pradesh Vs. Mohammad Nooh [1958 AIR 86, 1958 SCR 595]

> *"…the spectacle of a judge hopping on and off the bench to act first as judge, then as witness, then as judge again to determine whether he should believe himself in preference to another witness, is startling to say the least***."**

12. Generally three kinds of bias are considered as important:

a) Personal Bias – One may be personally interested in the outcome of the case. If one is required to act as the complainant as well as the decision making authority, the outcome is likely to be biased

b) Pecuniary bias – A person who has a monetary interest in an issue should not deal with the case. If one is a share holder in a company, it would be improper for him/her to decide whether a contract should be given to that company or some other company.

c) Bias of subject matter – One who has certain strong notions/ views about certain subjects might not be suitable for deciding issues relating to that subject. For example one having strong male chauvinistic views, may not be suitable for dealing with issues relating to harassment of women employee

13. Rule of bias must be borne in mind at the time of appointment of Inquiry Officer and dealing with the request of the Charged Officer for change of Inquiry officer.

14. It is well established that the rule of bias has the following exemptions:

- ❖ Waiver
- ❖ Necessity
- ❖ Statutory Power

15. Where the party concerned has waived its right to question the proceedings for violation of the rule of bias, the issue cannot be raised subsequently. Similarly there may be situation when a person may not be able to withdraw from the decision making process due to reasons of necessity. In the case of Ashok Kumar Yadav and Ors. etc. etc. Vs. State of Haryana and Ors. etc. etc. (Date of Judgment 10/05/1985) [1987 AIR 454, 1985 SCR Supl. (1) 657, 1985 SCC (4) 417 1985 SCALE (1)1290], the petitioners before the High Court had challenged the selection made by the State Public Service Commission on, inter alia, the following ground:

> *"The argument of the petitioners was that the presence of Shri R.C. Marya and Shri Raghubar Dayal Gaur on the interviewing committee gave rise to an impression that there was reasonable likelihood of bias in favour of the three candidates related to Shri R.C. Marya and Shri Raghubar Dayal Gaur and this had the effect of vitiating the entire selection process. This argument was sought to be supported by the petitioners by relying on the decisions reported in D.K. Khanna v. Union of India & Ors. Surinder Nath Goel v. State of Punjab and M. Ariffudin v. D.D. Chitaley & Ors."*

16. The above submission based on allegation of bias, was rejected by the Hon'ble Supreme Court on the ground of necessity in the following terms:

> *"The principle which requires that a member of a selection Committee whose close relative is appearing for selection should decline to become a member of the selection committee or withdraw from it leaving it to the appointing authority to nominate another person in his place, need not be applied in case of a Constitutional Authority like the Public Service Commission, whether Central or State. If a member of a Public Service Commission was to withdraw altogether from the selection process on the ground that a close relative of his is appearing for selection, no other person save a member can be substituted in his place. And it may sometimes happen that no other member is available to take the place of such member and the functioning of the Public Service Commission may be affected. When two more members of a Public Service Commission are holding a viva voce examination, they are functioning not as individuals but as the Public Service Commission. Of course, it must be made clear that when a close relative of a member of a Public Service Commission is appearing for interview, such member must withdraw from participation in the interview of that candidate and must not take part in any discussion in regard to the merits of that candidate and even the marks or credits given to that candidate should not be disclosed to him."*

17. Notwithstanding the above exemptions, it is essential that no person having any stake in the outcome of the disciplinary proceedings act as the Inquiry Authority nor exercise the powers of Disciplinary Authority.

Justice should manifestly appear to have been done

18. This was explained by the Hon'ble Supreme Court in Ashok Kumar Yadav and Ors. etc. etc. Vs. State of Haryana and Ors. etc. etc. (Date of Judgment 10/05/1985) [1987 AIR 454, 1985 SCR Supl. (1) 657, 1985 SCC (4) 417 1985 SCALE (1)1290], in the following terms.

> *"The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The basic principle underlying this rule is that justice must not only be done but must also appear to be done and this rule has received wide recognition in several decisions of this Court. It is also important to note that this rule is not confined to cases where judicial power stricto sensu is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. Justice is not the function of the courts alone; it is also the duty of all those who are expected to decide fairly between contending parties. The strict standards applied to authorities exercising judicial power are being increasingly applied to administrative bodies, for it is vital to the maintenance of the rule of law in a welfare state where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentalities of the State should discharge their functions in a fair and just manner."*

19. As already stated above, the Hon'ble Supreme Court had in the above case decided the submissions relating to allegation of bias on the ground of necessity.

Speaking orders

20. The advantages of a speaking order were summarized by the Hon'ble Supreme Court as under in the case of Travancore Rayons Vs Union of India [AIR 1971 SC 862] in the following manner:

- Disclosure guarantees consideration
- Introduces clarity
- Excludes or minimises arbitrariness
- Satisfaction of the party
- Enables appellate forum to exercise control

21. This principle of natural justice requires that following orders issued in the course of disciplinary proceedings, must be speaking orders:

- Orders disposing of the allegations of bias on the part of Inquiry Authority and requesting for change
- Orders dealing with the request for appointment of a Legal Practioner as a Defence Assistant
- Orders dealing with the request for appointment of a person from outstation as a Defence Assistant
- Orders rejecting the request for defence documents/witnesses
- Orders deciding on request for adjournment
- Final orders imposing penalty
- Orders of the Appellate, Revisionary or Reviewing authority

22. Components of speaking order and general considerations to be borne in mind while drafting a speaking order are dealt with in the chapter on *Drafting of final orders*.

Condition precedent and limitations

23. There was a time when the courts held that mere violation of principles of Natural Justice was adequate reason for setting aside the entire proceedings. However, the above approach is no more in vogue. One of the questions before the Hon'ble Supreme Court in Managing Director ECIL Vs. Karunakar [AIR 1994 SC 1074, JT 1993 (6) SC 1, (1994) ILLJ 162 SC] was "*what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases*." Hon'ble Supreme Court addressed this question through the doctrine of prejudice in the following terms:

> *"Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."*

24. It may be appreciated from the foregoing that although the principles of natural justice are very important in nature, there is no uniform rule regarding their applicability. This has been stated with ample clarity in the following paragraph in the case Oriental Bank of Commerce and Anr. Vs. R.K. Uppal (Decided On: 11.08.2011) [JT2011(9)SC1, 2011 (3), (2011)8SCC695] in the following terms:

> "*18. It is now fairly well settled that the requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with and so forth. In the words of Ramaswami, J. (Union of India and Anr. v. P.K. Roy and Ors. MANU/SC/0049/1967 : AIR 1968 SC 850) the extent and application of the doctrine of natural justice cannot be imprisoned within the straitjacket of a rigid formula. The application of the doctrine depends upon the nature of jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case."*

Conclusion

25. Briefly, all these above mentioned rules can be condensed into a dictum of two words: "*Be fair*". In this regard, one is reminded of the most important advice given by a father to his son in the passage popularly known as Polonius advice to Laertes in the immortal play of *Hamlet* by William Shakespeare:

> ***This above all: to thine own self be true,***
>
> ***And it must follow, as the night the day,***
>
> ***Thou canst not then be false to any man.***
>
> ***William Shakespeare.***

26. That is the essence of the Principles of Natural Justice:

Be true to yourself

CHAPTER – 5

SCOPE AND EXTENT OF APPLICABILITY OF CCA RULES

1. What are the circumstances under which the provisions of CCA Rules are to be invoked?

The following are the essential conditions for the application of the CCA Rules:

(a) Firstly the employee concerned must be amenable to the jurisdiction of the CCA Rules in terms of Rule 3 thereof.

(b) Secondly CCA rules can be applied only for the purpose for which the same have been prescribed

2. What is the category of employees who are within the jurisdiction of the CCA Rules?

Applicability of CCA Rules is clarified in Rule 3 of the CCA Rules. [This is not being re-produced for the sake of brevity]

Several autonomous bodies have adopted the rules applicable to the Government Servants and this includes the CCA Rules as well. Some organizations have their own rules for conducting disciplinary proceedings.

Further, the provisions relating to borrowed and lent officers as contained in Rule 21 of the CCA Rules are relevant in the case of such officers.

In addition to the provisions of Rule 3 of CCA Rules, the Hon'ble Supreme Court in its judgment in Union of India Vs. K S Subramanian has held that the Defence Civilians are not entitled for the protections under Article 311of the Constitution of India and consequently the CCA Rules 1965 also do not have application to the Defence Civilians.

However, subsequently, the Apex Court in Director General of Ordnance Services Vs. P N Malhotra, 1995 Supp (3) SCC 226 upheld the dismissal of a defence civilian by following the procedure laid down in CCA Rules 1965. The position was clarified as under:

> *10. The learned counsel for the appellants submits that the respondent cannot be said to have suffered any prejudice by following the procedure prescribed by 1965 Rules. He submits that the said Rules are nothing but a codification of the principles of natural justice. Indeed, it is submitted, they are more specific, more elaborate and more beneficial to the employee than the broad principles of natural justice. If we assume for the sake of argument that the respondent was entitled to insist upon an enquiry before he could be dismissed, we must agree with the submission of the learned counsel for the appellants. ……*

11. We must also mention that neither the Tribunal has stated - nor the respondent has suggested - that there are any other Rules applicable to disciplinary enquiries against such civilian employees which have not been followed - much less has it been stated that any such Rules are qualitatively different or more beneficial to the respondent.

12. The order under appeal shows, that though several grounds were raised in the original application filed by the respondent, the only point urged by his counsel at the time of arguments before the Tribunal was the one relating to inapplicability of the 1965 Rules. No other contention appears to have been urged.

13. In the circumstances, the appeal is allowed and the order of the Tribunal is set aside. The order dismissing the respondent as confirmed by the appellate order is restored. No costs.

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From the above, it may be inferred that there can be no objection to the application of the inquiry procedure laid down in CCA Rules in such cases where no specific procedure under any statutory provision has been laid down. Further it must be ensured that no prejudice is caused to the individual by the application of CCA Rules. It must be understood that the inquiry procedure laid down in the CCA Rules is only a codification of the Principles of Natural Justice which seek to protect the interest of the delinquent.

3. What are the purposes for which the provisions of CCA Rules are to be invoked?

There appears to be a misconception that the CCA Rules provide only the mechanism for imposition of penalties. It needs to be appreciated that the rules lays down the Classification of posts in Part II which contains Rules 4 to 7. Besides, the provisions relating to Appeals in Part VII comprising Rules 22 to 28 is also of a general nature because the rules provide for appeals in respect of orders relating to administrative matter. The list of orders against which appeal lies contained in Rule 23 makes this point clear.

Notwithstanding the above stated special circumstances, CCA Rules basically form part of the reward and punishment sub-system under Personnel Management system of organisation. It provides a mechanism for dealing with erring employees whose behavior does not conform to the prescribed organizational norms – either by express provision or by necessary implications. The rules cover the following aspects:

(a) What penalties can be imposed on an erring employee? (Rule 11)

(b) Who imposes these penalties? (Rule 12 and 13)

(c) What is the procedure to be followed for imposing these penalties? (Rule 14, 15, 16, 18, 19, etc.)

(d) What remedies are available to the employee after a penalty has been imposed? (Rule 22 to 29A)

(e) Issues which are incidental to the above? (Rule 10 [i.e suspension which is a step in aid for conducting inquiry], 31 to 35, etc.)

4. Is it mandatory to invoke the procedure laid down in the CCA Rules whenever a punitive move is taken against the employee?

In so far as the punitive moves are concerned procedures laid down in the CCA Rules are applicable only for imposing the penalties prescribed in the above rules. There may be several instances in the career of an employee which may have a punitive impact on the employee concerned but are not penalty within the meaning of the CCA Rules. An illustrative list of such adverse instances in the career of the employee is available under the Explanation under Rule 11 of the CCA Rules. The same is not re-produced for the sake of brevity.

Some distinguishing features between a penalty and other adverse instances in the career of an employee are as under:

(a) A penalty is that which is imposed for a good and sufficient reason as prescribed in Rule 11; on the other hand the adverse instances illustrated under the Explanation under Rule 11 are the natural consequences of certain deficiencies of the employee or the enforcement of contractual or statutory provisions.

(b) Imposition of penalty basically carries with it a stigma. On the other hand, if an employee is reverted to the lower post for want of vacancy, it involves no stigma.

(c) Imposition of a penalty implies a misconduct on the part of the employee i.e. an omission or commission on the part of employee which has a bearing on his/her competence, conduct and character. On the other hand, other adverse instances may indicate the imbalance between the job requirement and the employee capability.

(d) A penalty can be imposed after following the procedure prescribed in the Rules – even if the inquiry is dispensed with under Rule 19 of the CCA Rules, there is a procedure prescribed for it in the Rules. On the other hand, adverse instances of career can be meted out after following the procedure laid down under various service rules – say DPC Procedure, or procedure for review under Fundamental Rules 56(J), etc.

5. What procedure is to be followed for terminating the services of a probationer?

Services of a probationer or temporary employee can be terminated by invoking the terms of appointment or the Temporary Services Rules – if it is applicable to that case. This is known as discharge simpliciter. Normally the rules would provide for a notice period or salary in lieu of notice period. This must be complied with.

6. What precautions are to be taken while visiting the employee with adverse career impact by invoking the terms of contract or statutory provisions?

Two precautions must be ensured under the above circumstance

(a) The provisions of the contract or the statutory provisions must be adhered to – say the length of the notice period, the conditions and procedure prescribed in the statutory provisions such as FR 56 (J), etc.

(b) The order of discharge must not cast any stigma on the employee concerned. For example, the order discharging a probationer should not mention any deficiency on the part of the employee. The discharging authority has no power to cast any aspersion on the competence or character of the employee without providing any opportunity to clarify his/her position.

7. If an employee has become permanent, is it mandatory to follow the procedure prescribed under CCA Rules for sending him/her out of service?

Not necessarily. Even a permanent employee can be sent out of service without following the provisions of CCA Rules under the following circumstances:

(a) As stated above, a permanent employee can be sent out of service under the provisions of FR 56 (J)

(b) An employee whose employment has been obtained by fraud or mis-representation, can be sent out of service without any inquiry

(c) An employee found guilty of sexual harassment of women in the working place may be dismissed from service without recourse to separate proceedings under Rule 14 of CCA Rules because under the proviso to Rule 14(2), the Complaints Committee constituted under Rule 3-C of the CCS (Conduct) Rules 1964 shall be deemed to be the Inquiring Authority and the Committee shall conduct the inquiry as far as possible, in accordance with Rule14 of CCA Rules unless separate procedure has been prescribed for the Committee

8. What is the justification, in the absence of any statutory provision, for dismissing a permanent employee without inquiry/reasonable opportunity of defence?

The Apex Court in the case of R. Vishwanatha Pillai Vs. State of Kerala & Ors. DATE OF JUDGMENT: 07/01/2004 [2004 AIR 1469, 2004(1)SCR360 , 2004(2)SCC105 , 2004(1)SCALE285 , 2004(1)JT88] was concerned with the termination of service of an IPS officer with 27 years of service on grounds of submitting, at the time of recruitment to the Kerala State Police Service, a false certificate claiming to belong to Scheduled Caste. Observing that the Appellant was provided a reasonable opportunity at the time of scrutiny of the validity of the caste certificate the Hon'ble Supreme Court went on to clarify the applicability of Article 311 of the Constitution of India in the following terms:

> *This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eyes of law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under the Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Caste. In view of the finding recorded by the Scrutiny Committee and upheld upto this Court he has disqualified himself to hold the post. Appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As appellant had obtained the appointment by playing a fraud he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.*

Later in the same order, the Apex court, in the following para, expressed its approval for the view of the Patna High Court that one who has secured appointment by fraud is not entitled for any benefit, let alone reasonable opportunity of defence at the time of dismissal from service:

> *The point was again examined by a Full Bench of the Patna High Court in Rita Mishra Vs. Director, Primary Education, Bihar, AIR 1988 Patna 26. The*

question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held:

> *"13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in pubic service. Therefore, these rights including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow it."*

We agree with the view taken by the Patna High Court in the aforesaid cases.

9. What is the justification for imposition of penalty in the case of sexual harassment, based on the report of the Complaints Committee without initiating any proceedings under Rule 14 of the CCA Rules?

Cases relating to sexual harassment are covered under the proviso the Rule 14(2) which is extracted hereunder:

> *Provided that where there is a complaint of sexual harassment within the meaning of rule 3 C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the complaints committee for holding the inquiry into the complaints of sexual harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules.*

As the employee had been provided reasonable opportunity of defence before the Complaints Committee he cannot complain of denial of reasonable opportunity of defence.

10. What about the cases relating to sub-letting of Government Accommodation?

Based on the following observation of the Hon'ble Supreme Court in its order dated 29.11.1996 in Writ Petition No. 585/94 (S.S.Tiwari Vs. UOI & Others), the Government has issued instructions [DOPT OM No. 11012/2/97-Estt.(A), dated 31.12.1997] for initiating proceedings against the erring Government Servants. However it must be observed that in these types of cases only the findings of the complaints committee are

binding and the proceedings under CCA Rules are required to be carried out:

> *It is, therefore, obligatory for the disciplinary authority of the department concerned to initiate disciplinary proceedings against concerned Government servant under Rule 14 of the CCS (CCA) Rules, 1965. As soon as the allotment is cancelled by the Directorate of Estate on the ground of sub-letting, the disciplinary authority of the Department concern shall initiate disciplinary proceedings against the Government servant concerned. The findings of the Directorate of Estates regarding sub-letting shall be binding on the disciplinary authority for the purpose of initiating the disciplinary proceedings. Once the disciplinary proceedings are initiated, the procedure laid down under the CCS (CCA) Rules shall take its own course. Since the disciplinary proceedings in such cases would be initiated on a charge of grave misconduct, the competent authority may consider placing the delinquent Government servant under suspension."*

11. What is the position about the cases falling under the second proviso to clause (2) of Article 311?

The cases discussed above are outside the ambit of CCA Rules. In fact, in the above stated cases, with the exception of sexual harassment and sub-letting of accommodation, the Government Servant is not being awarded any penalty at all. On the other hand, the cases falling under the second proviso to clause (2) of Article 311, the proceedings are very much under the CCA Rules with the only exception that they are under the special provisions prescribed in Rule 19 of the CCA Rules, which, in a sense is the exemption to Rule 14 of the CCA Rules

CHAPTER - 6

HANDLING COMPLAINTS

1. What is a complaint?

In vigilance parlance, any source of information about a vigilance misdeed in the organization is a complaint. Para 3.1 of the Vigilance Manual (2005 Ed) defines complaint as *"Receipt of information about corruption, malpractice or misconduct on the part of public servants, from whatever source, would be termed as a complaint."* Further para 3.2.1 of the above manual gives a non-exhaustive list of what all constitute complaint. Thus, an inspection report, press clipping, property transaction reports under the Conduct Rules, etc. fall within the ambit of complaint, if they throw any light on the misdeed in the organization.

Even in the complaints received from the public or the employees of the organization, there used to be umpteen instances when the author might not have intended that to be a complaint but the communication provided valuable information about an organized crime in the organization and therefore it was treated and registered as a complaint. Some such instances are:

(a) A letter was received from a former employee of the organization seeking arrears of salary for the part of the month in which he was relieved on acceptance of his resignation. While trying to take some reference number from the old pay bill, it turned out that somebody was collecting pay in the name of the resigned employee continuously for several months after the said employee resigned from service.

(b) A representation was received from an employee stating that his name was missing in the seniority list of group 'D' employees of the organization. While attempting to check the reasons for this omission, it emerged that the employee in question and several others were appointed through forged appointment orders issued by a racket.

2. What is the first action on receipt of a complaint?

On receipt of a complaint, it is checked whether it has a vigilance angle. If it has vigilance angle, it is entered in the appropriate part of the register prescribed by the Vigilance Manual.

3. What is Vigilance Angle?

Para 1.6.1 of the Vigilance Manual explains what is Vigilance Angle. According to Vigilance Manual, obtaining illegal gratification of any kind by corrupt means or by abusing official position, possession of assets disproportionate to known sources of income, misappropriation, forgery, cheating and other criminal offences are cases having vigilance angle.

Cases of unauthorized absence, over-stayal, insubordination, use of abusive language, etc. do not have any vigilance angle.

There are some border line cases, such as gross or willful negligence; recklessness in decision making; blatant violations of systems and procedures; exercise of discretion in excess, where no ostensible public interest is evident; failure to keep the controlling authority/superiors informed in time – these are some of the irregularities where the disciplinary authority with the help of the CVO should carefully study the case and weigh the circumstances to come to a conclusion whether there is reasonable ground to doubt the integrity of the officer concerned.

4. What are the two parts of the register for recording complaints?

One part of the register is meant for registering the complaints in respect of category 'A' officers i.e. those in respect of whom the advice of the CVC is required. The other part pertains to Category 'B' officers are those in respect of whom CVC advice is not required.

As far as central Government employees are concerned Category 'A' refers to Group 'A' officers.

If a complaint involves both the categories of officers, it shall be entered in the higher category i.e. category 'A'.

5. How to deal with anonymous and pseudonymous complaints?

Para 3.8.1 of the CVC Manual provides that as a general rule, no action is to be taken by the administrative authorities on anonymous/pseudonymous complaints received by them. It is also open to the administrative authorities to verify by enquiring from the signatory of the complaint whether it had actually been sent by him so as to ascertain whether it is pseudonymous.

CVC has also laid down that if any department/organisation proposes to look into any verifiable facts alleged in such complaints, it may refer the matter to the Commission seeking its concurrence through the CVO or the head of the organisation, irrespective of the level of employees involved therein.

Besides, any complaint referred to by the Commission is required to be investigated and if it emerges to be a pseudonymous, the matter must be reported to the Commission.

6. What action is required in the case of false complaints?

If a complaint is found to be malicious, vexatious or unfounded, departmental or criminal action as necessary should be initiated against the author of false complaints

7. What are the various ways in which a complaint can be dealt with?

A complaint which is registered can be dealt with as follow:

(a) file it without or after investigation; or

(b) to pass it on to the CBI for investigation/appropriate action; or

(c) to pass it on to the concerned administrative authority for appropriate action on the ground that no vigilance angle is involved; or

(d) to take up for detailed investigation by the departmental vigilance agency.

A Complaint will be treated as disposed off either on issue of charge-sheet or final decision for closing or dropping the complaint.

CHAPTER - 7

PRELIMINARY INVESTIGATION

1. What is preliminary investigation?

Preliminary investigation, also known as Fact Finding Inquiry, is the process of checking the veracity of a complaint.

2. What is the purpose of preliminary investigation?

Following are purposes of a preliminary investigation:

- To check the veracity of the complaint
- If the complaint is true, to collect evidence in support of the charge.

3. What are the various options for conducting Preliminary Investigation?

Preliminary Investigation may be carried out either departmentally or through Police authorities.

4. What are the cases which may be investigated departmentally?

Cases involving allegations of misconduct other than an offence, or a departmental irregularity or negligence, and those wherein alleged facts are capable of verification or inquiry within the department/office should be investigated departmentally.

5. What are the cases to be referred to CBI or Police?

As per the Vigilance Manual, the following types of cases are to be referred to CBI or the police:

(a) Allegations involving offences punishable under law which the Delhi Special Police Establishment are authorized to investigate; such as offences involving bribery, corruption, forgery, cheating, criminal breach of trust, falsification of records, possession of assets disproportionate to known sources of income, etc.

(b) Cases in which the allegations are such that their truth cannot be ascertained without making inquiries from non-official persons; or those involving examination of non-Government records, books of accounts etc.; and

(c) Other cases of a complicated nature requiring expert police investigation.

6. What is the course of action when the complaint contains both the above mentioned types of cases?

Where the complaint contains both the above mentioned types of issues, decision should be taken in consultation with the Central Bureau of Investigation as to which of the allegations should be dealt with departmentally and which should be investigated by the Central Bureau of Investigation. If there is any difficulty in separating the allegations for separate investigation in the manner suggested above, the better course would be to entrust the whole case to the Central Bureau of Investigation.

7. Can a case be simultaneously investigated by the department as well as CBI?

No. Parallel investigation should be avoided. Once a case has been referred to and taken up by the CBI for investigation, further investigation should be left to them. Further action by the department in such matters should be taken on completion of investigation by the CBI on the basis of their report. However, if the departmental proceedings have already been initiated on the basis of investigations conducted by the departmental agencies, the administrative authorities may proceed with such departmental proceedings. In such cases, it would not be necessary for the CBI to investigate those allegations, which are the subject matter of the departmental inquiry proceedings, unless the CBI apprehends criminal misconduct on the part of the official(s) concerned.

8. Who can be assigned the task of conducting preliminary investigation?

There are no specific instructions as to who can conduct preliminary investigation. While normally the Vigilance Officers may be entrusted with the task of preliminary investigation, where technical knowledge is required, preliminary investigation may be assigned to an officer having the requisite knowledge. Vigilance Manual recommends that the task may be assigned to an officer of appropriate status if the complaint is against a senior public servant. Seniority/status of the officer conducting preliminary investigation will also be helpful in eliciting information from those who can provide that.

9. What precautionary action will facilitate preliminary investigation?

At times it may be advantageous to transfer the suspected public servants from the charge they are holding to pre-empt prospects of the evidence being tampered or destroyed. But this must be done with requisite tact so that the action does not alert the forces which have played mischief, even before the first step is taken in preliminary investigation.

10. What are the steps involved in conducting preliminary Investigation?

Following steps may be helpful for conduct of preliminary investigation:

(a) Study and analyse the complaint.

(b) List the facts that need to be verified and the evidence in support thereof.

(c) Check whether any site inspection is necessary. [e.g. If the allegation relates to some construction]

(d) Identify if any evidence relating to the complaint is perishable or likely to undergo change in due course of time [If the crop standing on the land is to be verified, it must be done before harvesting; in certain cases, evidence may be lost during monsoon. etc.]

(e) List the documents and persons who can provide information on the matters raised in the complaint.

(f) Where a surprise check is involved, carry out the same without any delay. Conduct of surprise inspection, where necessary, should be the first visible action of the preliminary investigation. Otherwise, site inspection may be taken up after taking over of documents, as explained in the next sub-para.

(g) In a single swift move, collect all the relevant documents. This is all the more necessary because, once the interested parties come to know that a preliminary investigation is going on, efforts will be made to tamper with the documents. In case any of the documents are required for further action by the authorities concerned, authenticated copies may be made available to the authorities concerned. If the above course of action is not possible for any reason, the documents must be left to the custody of an officer in the relevant branch of the organization making him/her responsible for the safety of the documents.

(h) Where relevant, write to the complainant, if not already done by the administrative authorities. Ask if he/she can provide any additional information or evidence. In case the complaint has been triggered by an aggrieved individual, (say an unsuccessful bidder, unsuccessful candidate for recruitment) the complainant may provide necessary documents with a sense of vengeance!

(i) Talk to the persons who are likely to have information about the issue. Record the proceedings and get it signed by the deposer. This phase of the preliminary investigation is perhaps most challenging because one may come across several reluctant and unwilling persons. The preliminary investigation officer should use all his tact and persuasive skills for eliciting information even from the unwilling witnesses.

(j) While it is not mandatory to talk to the suspected public servant at the stage of preliminary investigation, it may be a desirable course of action in most of the cases.

(k) Study the information collected so as to formulate views as to whether a conclusion could be drawn about the veracity of the allegations.

(l) If no conclusion could be arrived at, repeat the steps mentioned above

(m) Prepare investigation report and submit with the original documents collected or created during the investigation.

11. Does the failure to contact the suspected public servant amount to violation of the principles of natural justice?

As the purpose of preliminary investigation is to ascertain truth there is no need for contacting the suspected public servant. As is well known, no penalty can be imposed based on the findings of a preliminary investigation without issue of a formal charge sheet and conduct of formal departmental proceedings.

In the entire gamut of activities during disciplinary proceedings, Preliminary Investigation has a unique feature in that it is completely at the discretion of the administrative authorities. It is not covered by any statutory provision; not even the principles of natural justice are applicable to it. This has been explicitly elucidated by the Hon'ble Supreme Court in Kendriya Vidyalaya Sangathan Vs. Arunkumar Madhavrao Sinddhaye and Anr. [JT2006(9)SC549, (2007)1SCC283, 2007(3)SLJ41(SC)]

> *"Therefore, in order to ascertain the complete facts it was necessary to make enquiry from the concerned students. If in the course of this enquiry the respondent was allowed to participate and some queries were made from the students, it would not mean that the enquiry so conducted assumed the shape of a formal departmental enquiry. No articles of charges were served upon the respondent nor the students were asked to depose on oath. The High Court has misread the evidence on record in observing that articles of charges were served upon the respondent. The limited purpose of the enquiry was to ascertain the relevant facts so that a correct report could be sent to the Kendriya Vidyalaya Sangathan. The enquiry held can under no circumstances be held to be a formal departmental enquiry where the non-observance of the prescribed rules of procedure or a violation of principle of natural justice could have the result of vitiating the whole enquiry."*

12. What to do if a need arises for contacting officials of other department while conducting preliminary investigation?

In such an eventuality, the investigation officer may seek the assistance of the department concerned, through its CVO, for providing facility for interrogating the person(s) concerned and/or taking their written statements.

13. What to do if a need arises for examining documents of non-official organization or to collect evidence from non-official persons?

In such an eventuality, further investigation should be entrusted to CBI.

14. What attributes will make a successful preliminary investigation officer?

(a) Knowledge – of not only the rules and regulations but also practices and procedures pertaining to the organization and prevailing at the relevant point of time. For example, if the office copy of the document is not available in the file, the preliminary investigation officer should know that it was customary for the copies of such letters to be endorsed to certain subordinate organizations or place copies in certain folders. An officer with the knowledge of the practices and procedures will manage to get copy of the letter from such sources as well.

(b) Imagination – the preliminary investigation officer has to visualize where from the relevant information relating to the transaction is likely to be available and who all are likely to know about it. For example, if there is some suspicion about the family details of the employee, the preliminary investigation officer should visualize that such details may be available in the attestation form, GPF advance applications, children education allowance applications, LTC claims, medical reimbursement claims, nomination forms, etc.

(c) Tenacity – tenacity is the quality of possessing "never-say-die" spirit. While conducting preliminary investigation, the officer may come across several dead ends. He/she takes a clue and proceeds. After some progress, it may abruptly end without giving any definite conclusion. Preliminary investigation officer will have to pursue another thread. Even if this ends abruptly, the officer must pursue yet another clue.

(d) Eye for details – "*Look for the abnormal"* is the catch phrase for the preliminary investigation officer.

15. What are the components of the report of the preliminary investigation?

(a) Introduction: [e.g.: The undersigned was directed vide order No. ……. Dated …. of ….. to carry out preliminary investigation of the alleged irregularities listed in the inspection report no. ,…..dated …. of the ….. regarding ……]

(b) Gist of the allegations: [e.g.: Prima facie it appeared from the inspection report that there was mismatch between the physical

delivery of goods and the entry in the records. It seemed that the above discrepancy was attributable to the connivance and active participation of some of the officers of the material division….]

(c) Points needing proof: [e.g.: The investigation was required to establish whether there was any manipulation of marks in the recruitment test held during Jul 2010 and who were responsible for the manipulation]

(d) Gist of action taken by the preliminary investigation officer: [preliminary investigation officer was required to obtain documents and talk to officials of …… office. This was arranged with the kind help of Shri xxx CVO of …. As the allegations pertained to availing of subsidy without actually cultivating the crops for which it was granted, there was a need for site inspection also. The investigation officer carried out site inspection at …… on …….]

(e) Evidence collected: [preliminary investigation officer collected 58 documents as listed in the Annexure A to this report and talked to the 17 persons listed in Annexure B. out of the above, the documents listed at S. No. 25 to 33 were obtained from …… Oral witnesses at S. No. 9 to 12 are employees of ….. who were contacted through the kind intervention of Shri …. CVO ….]

(f) Evaluation of evidence:[this is the heart and soul of the report]

(g) Whether the Suspected Public Servant was contacted? If so what is his version?

(h) Evidence controverting the version of the Suspected public servant

(i) Conclusion.

16. What is time limit for completion of preliminary investigation?

CVC expects preliminary investigation to be completed within three months

CHAPTER - 8

ACTION ON INVESTIGATION REPORT

1. What are the possible actions on the Preliminary Investigation Report?

Possible actions on the Preliminary Investigation report are as under:

(a) Closure of the case: In case the investigation report indicates that no misconduct has been committed, the case may be closed.
(b) Action against false complaints:
(c) Administrative action: This includes issue of warning, clarification to the decision making authorities, etc.
(d) Minor Penalty Proceedings
(e) Major penalty proceedings
(f) Criminal prosecution

2. What actions are to be taken against persons filing false complaints?

Para 4.17.1 of the CVC Manual Sixth Edition, 2004, provides that If a complaint against a public servant is found to be malicious, vexatious or unfounded, it should be considered seriously whether action should be taken against the complainant for making a false complaint.

In case false complaints have been filed by Government servants, initiation of suitable departmental action against them may be considered by making reference to the authorities having disciplinary powers over such Government Servants.

Possibility of launching criminal prosecution under section 182 of IPC by lodging a complaint under section 195(1)(a) of Criminal Procedure must be explored.

3. What is the role of CVC in making decisions on Preliminary Investigation Reports?

First stage advice of CVC is to be obtained in respect of cases falling under purview of CVC. i.e. following types of cases:

(a) The cases which have been referred by the CVC for report
(b) The cases having vigilance angle and
(c) Pertaining to Group 'A' officer or a group of officers including a Group A officer

4. What is the procedure for making reference to CVC for seeking first stage advice?

This is dealt with in a subsequent chapter

CHAPTER – 9

CONSULTATION WITH CENTRAL VIGILANCE COMMISSION

1. What is the origin and present status of Central Vigilance Commission (CVC)?

Central Vigilance Commission was set up by the Government of India by a Resolution, dated 11.2.1964 based on the recommendations of the Committee on Prevention of Corruption [*popularly known as Santhanam Committee*]. Consequent upon the judgement of the Hon'ble Supreme Court in *Vineet Narain vs. Union of India* [*CWP 340-343 of 1993*], the Commission was accorded statutory status with effect from 25.8.1998 through "*The Central Vigilance Commission Ordinance, 1998"*. Subsequently, the CVC Bill was passed by both Houses of Parliament in 2003 and the President gave its assent on 11th September 2003. Thus, the Central Vigilance Commission Act, 2003 (No.45 of 2003) came into effect from that date.

2. What is the composition of the CVC?

In terms of the provisions made in the CVC's Act, the Commission shall consist of a Central Vigilance Commissioner [Chairperson] and not more than two Vigilance Commissioners [Members]. Presently, the Commission is a three member Commission consisting of a Central Vigilance Commissioner and two Vigilance Commissioners.

3. What is the mode of appointment of the Central Vigilance Commissioner and other Vigilance Commissioners?

The Central Vigilance Commissioner and the Vigilance Commissioners are appointed by the President by warrant under his hand and seal based on the recommendations of a committee comprising the following:

(*a*) the Prime Minister — Chairperson;
(*b*) the Minister of Home Affairs --- Member;
(*c*) the Leader of the Opposition in the House of the People — Member

for a term of four years from the date on which they enter upon their offices or till they attain the age of sixty-five years, whichever is earlier.

4. What is the term of the Central Vigilance and other Vigilance Commissioners?

The Central Vigilance Commissioner and other Vigilance Commissioners shall hold officer for a term of four years from the date on which they enter upon their offices or till they attain the age of sixty-five years, whichever is earlier.

5. What measures have been provided in the Act to ensure independence of the Central Vigilance Commission?

Following are some of the measures provided in the Act to ensure independence of the Central Vigilance Commission:

(a) Central Commissioner and the Vigilance Commissioners have been provided a fixed term of appointment, as seen above.
(b) They are not eligible for re-appointment except that a Vigilance Commissioner may be appointed as the Central Vigilance Commissioner, for the left over period out of the total of four yers
(c) On ceasing to hold office, they are not eligible for appointment as

    (i) any diplomatic assignment, appointment as administrator of a Union territory and such other assignment or appointment which is required by law to be made by the President by warrant under his hand and seal.

    (ii) further employment to any office of profit under the Government of India or the Government of a State.

(d) They can be removed from office only by order of the President on the ground of proved misbehavior or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Central Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought on such ground be removed.

6. What are the functions and powers of CVC?

In addition to the functions entrusted to CVC vide Government of India's Resolution dated 11.02.1964, the CVC Act assigns the following functions and powers to CVC:

(a) To exercise superintendence over the functioning of Delhi Special Police Establishment [DSPE] insofar as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act (PC Act) or an offence with which a public servant belonging to a particular category [i.e. a member of All India Services serving in connection with the affairs of the Union; or Group 'A' officer of the Central Government; or an officer of the Central Public Sector enterprise/autonomous organisation etc.] may be charged under the Code of Criminal Procedure at the same trial;

(b) To give directions to the DSPE for the purpose of discharging the responsibility of superintendence. The Commission, however, shall not exercise powers in such a manner so as to require the DSPE to investigate or dispose of any case in a particular manner;

(c) To inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central Government or a corporation established by or under any Central Act, Government company, society and any local authority owned or controlled by that Government, has committed an offence under the PC Act; or an offence with which a public servant may, under the Code of Criminal Procedure, 1973, be charged at the same trial;

(d) To inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to the following categories of officials, wherein it is alleged that he has committed an offence under the PC Act:

(i) Members of All India Services serving in connection with the affairs of the Union;

(ii) Group 'A' Officers of the Central Government;

(iii) Officers of Scale-V and above of public sector banks;

(iv) Such level of officers of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf, provided that till such time a notification is issued, all officers of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred to in this clause.

(e) To review the progress of applications pending with the competent authorities for sanction of prosecution under the PC Act;

(f) To review the progress of investigations conducted by the DSPE into offences alleged to have been committed under the PC Act;

(g) To tender advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, the said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise; and

(h) To exercise superintendence over the vigilance administration of various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

7. What functions were assigned to CVC vide Government of India's Resolution dated 11.02.1964?

Clause 24 of the CVC Act empowers the Commission to discharge the functions entrusted to it vide Government of India's Resolution dated 11.02.1964, insofar as those functions are not inconsistent with the provisions of the Act. Accordingly, the Commission will continue to discharge the following functions over and above those assigned vide the CVC Act:

***(a) Appointment of CVOs*:** The Commission would convey approval for appointment of CVOs in terms of para 6 of the Resolution, which laid down that the Chief Vigilance Officers will be appointed in consultation with the Commission and no person whose appointment as the CVO is objected to by the Commission will be so appointed.

(b) *Writing ACRs of CVOs*: The Central Vigilance Commissioner would continue to assess the work of the CVO, which would be recorded in the character rolls of the officer concerned in terms of para 7 of the Resolution.

(c) *Commission's advice in Prosecution cases*: In cases in which the CBI considers that a prosecution should be launched and the sanction for such prosecution is required under any law to be issued in the name of the President, the Commission will tender advice, after considering the comments received from the concerned Ministry/Department/Undertaking, as to whether or not prosecution should be sanctioned.

(d) *Resolving difference of opinion between the CBI and the administrative authorities*: In cases where an authority other than the President is competent to sanction prosecution and the authority does not propose to accord the sanction sought for by the CBI, the case will be reported to the Commission and the authority will take further action after considering the Commission's advice. In cases recommended by the CBI for departmental action against such employees as do not come within the normal advisory jurisdiction of the Commission, the Commission will continue to resolve the difference of opinion, if any, between the CBI and the competent administrative authorities as to the course of action to be taken.

(e) *Entrusting cases to CDIs*: The Commission has the power to require that the oral inquiry in any departmental proceedings, except the petty cases, should be entrusted to one of the Commissioners for Departmental Inquiries borne on its strength; to examine the report of the CDI; and to forward it to the disciplinary authority with its advice as to further action.

(f) *Advising on procedural aspects*: If it appears that the procedure or practice is such as affords scope or facilities for corruption or misconduct, the Commission may advise that such procedure or practice be appropriately changed, or changed in a particular manner.

(g) *Review of Procedure and Practices*: The Commission may initiate at such intervals as it considers suitable review of procedures and practices of administration insofar as they relate to maintenance of integrity in administration.

(h) *Collecting information*: The Commission may collect such statistics and other information as may be necessary, including information about action taken on its recommendations.

(i) *Action against persons making false complaints*: The Commission may take initiative in prosecuting persons who are found to have made false complaints of corruption or lack of integrity against public servants.

8. What are the cases on which the Commission's advice is sought?

The Commission's advice is sought in the following types of cases?

(a) Where the official involved belongs to the category under the purview of the Commission (i.e. Group A officer in the Government)

(b) Where the case has vigilance angle

9. What are the cases having vigilance angle?

Vigilance Manual (Sixth Edition, 2005) indicates two categories of cases having Vigilance Angle, viz. the cases which indisputably have vigilance angle and the cases which, depending upon the facts and circumstances have vigilance angle.

Para 1.6.1 illustrates the following acts wherein Vigilance angle is obvious:

(i) Demanding and/or accepting gratification other than legal remuneration in respect of an official act or for using his influence with any other official.

(ii) Obtaining valuable thing, without consideration or with inadequate consideration from a person with whom he has or likely to have official dealings or his subordinates have official dealings or where he can exert influence.

(iii) Obtaining for himself or for any other person any valuable thing or pecuniary advantage by corrupt or illegal means or by abusing his position as a public servant.

(iv) Possession of assets disproportionate to his known sources of income.

(v) Cases of misappropriation, forgery or cheating or other similar criminal offences.

Besides, para 1.6.2 provides the following illustrative list of irregularities where circumstances will have to be weighed carefully to take a view regarding the officer's integrity:

(a) Gross or willful negligence;
(b) recklessness in decision making;
(c) blatant violations of systems and procedures;
(d) exercise of discretion in excess, where no ostensible public interest is evident;
(e) failure to keep the controlling authority/ superiors informed in time

The manual suggests that in these types of cases, the disciplinary authority with the help of the CVO should carefully study the case and weigh the circumstances to come to a conclusion whether there is reasonable ground to doubt the integrity of the officer concerned.

10. How to deal with the cases which do not have a vigilance angle?

Cases which do not have a vigilance angle will have to be dealt with departmentally.

11. What is the procedure for seeking first stage advice?

CVC has vide its Circular No. 21/8/09 dated the 6th August 2009 prescribed revised format for the proposals seeking first stage advice. A copy of the letter is annexed herewith for ease of reference.

12. What is the procedure for seeking the second stage advice of CVC?

Based on the recommendations of the Hota Committee *(Committee of Experts to review the procedure of Disciplinary/Vigilance Inquiries and recommended measures for their expeditious disposal),* DoPT, vide its OM No. No.372/19/2011-AVD-III(Pt.1) dated the 26th September, 2011 has dispensed with second stage consultation with CVC in disciplinary matters where UPSC is consulted. However, in those cases where consultation with UPSC is not required as per extant rules/instructions, the second stage consultation with CVC should continue.

In respect of the cases where CVC is to be consulted, the details of the documents to be forwarded is available in Circular No. 21/8/09 dated the 6th August 2009 annexed to this chapter

13. What is the position regarding re-consideration in case of disagreement of the organization with the recommendations of the CVC?

This aspect has been clarified vide CVC circular No.15/4/08 dated 24th April, 2008, as under:

"The Commission has, therefore, decided that no proposal for reconsideration of the Commission's advice would be entertained unless new additional facts have come to light which would have the effect of altering the seriousness of the allegations/charges leveled against an officer. Such new facts should be substantiated by adequate evidence and should also be explained as to why the evidence was not considered earlier, while approaching the Commission for its advice. The proposals for reconsideration of the advices, if warranted, should be submitted at the earliest but within two months of receipt of the Commission's advice. The proposals should be submitted by the disciplinary authority or it should clearly indicate that the proposal has the approval of the disciplinary authority."

14. Why there is need of sanction for prosecution?

Under Section 19 of the Prevention of Corruption Act, 1988, it is necessary for the prosecuting authority to have the previous sanction of the appropriate administrative authority for launching prosecution against a public servant. The section provides that "*No court shall take cognizance of an offence punishable under Section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction"* of the authorities mentioned therein

The purpose behind the above provision is 'to afford a reasonable protection to a public servant, who in the course of strict and impartial discharge of his duties may offend persons and create enemies, from frivolous, malicious or vexations prosecution and to save him from unnecessary harassment or undue hardship which may result from an inadequate appreciation by police authorities of the technicalities of the working of a department'

From the above stated purpose of the need for sanction for prosecution it may be evident that in respect of retired public servants there is no need for any sanction for prosecution

Sanction is to be accorded by the authority competent to remove the delinquent from service.

15. Whether a private citizen can file a complaint for prosecution of a corrupt public servant.

As per the judgment dated 31 January 2012 of the Hon'ble Supreme Court in Civil appeal No 1193 of 2012 [Dr. Subramanian Swamy Vs Dr. Manmohan Singh and another] the right of the private citizen to file criminal complaint against a corrupt public servant has been up held.

16. What is the procedure regarding issue of sanction for prosecution?

Latest guidelines on the subject were issued vide DoPT OM No. No.372/19/2012-AVD-III dated 3rd May, 2012. Following is the gist of these guidelines:

(a) In all cases where the Investigating Agency has requested sanction for prosecution and also submitted a draft charge sheet and related documents along with the request, it will be mandatory for the competent authority to take a decision within a period of 3 months from receipt of request, and pass a Speaking Order, giving reasons for this decision.

(b) In the event that the competent authority refuses permission for sanction to prosecute, it will have to submit its order including reasons for refusal, to the next higher authority for information within 7 days. Wherever the Minister-in-charge of the Department is the competent authority and he decides to deny the permission, it would be incumbent on the Minister to submit, within 7 days of passing such order denying the permission, to the Prime Minister for information.

(c) It will be the responsibility of the Secretary of each Department/Ministry to monitor all cases where a request has been made for permission to prosecute. Secretaries may also submit a certificate every month to the Cabinet Secretary to the effect that no case is pending for more than 3 months, the reasons for such pendency and the level where it is pending may also be explained.

(d) In cases of disagreement where the competent authority proposes to disagree with the investigating agency/CVC, the matter shall be referred to DoP&T and DoP&T's views in such cases must be communicated to the Competent Authority within such time as would enable the competent authority to pass the final speaking order within a period of three months.

No.006/PRC/1
Government of India
Central Vigilance Commission
*****

Satarkta Bhawan, Block 'A',
GPO Complex, INA,
New Delhi- 110 023
Dated the 6th August, 2009

Circular No.21/8/09

Subject: **References to the Commission for first stage advice – procedure regarding.**

Reference: **(i) Commission's circular No.NZ/PRC/1 dated 26.2.2004;**
(ii) Commission's circular No.NZ/PRC/1 dated 9.5.2005;
(iii) Commission's circular No. 006/PRC/1 dated 13.3.2006; and
(iv) Commission's circular No.006/PRC/1 dated 1.12.2008

The Commission receives preliminary inquiry reports from the Chief Vigilance Officers (CVOs) of Departments/Organisations, seeking the first stage advice. Reports for similar action also emanate from the CVOs in response to the Commission's directions for investigation issued u/s 8(1)(d) of the CVC Act, 2003. However, these reports are often found lacking in cogent analysis of misconduct or allegations, evidence on record and the recommendation of line of action. The supporting documents catered are also very often disjointed, casually arranged or unduly bulky, making the examination cumbersome and leading to protracted correspondence and delays.

2. With a view to improving the quality and focus of these investigation reports, the Commission has devised a new reporting format. Accordingly, it is directed that henceforth, a vigilance report should broadly conform to the parameters specified in Annexure A. Further, as the Commission lays utmost emphasis on facts, evidence and recommendations made by the CVOs, an investigation report should invariably be accompanied by an Assurance Memorandum (Annexure B) signed by the CVO, taking due responsibility and giving assurance of a comprehensive application of mind while submitting the report.

3. In supercession, therefore, of earlier instructions of the Commission on submission of investigation reports, the following instructions should be followed scrupulously while seeking the first stage advice:

(i) All vigilance reports of the CVOs should conform to the parameters prescribed in **Annexure-A**.
(ii) They would be accompanied by an Assurance Memo, in the form of **Annexure-B**.

Contd…2/-

(iii) Bio-data of suspect officials, figuring in the investigation reports, should be enclosed as per the format provided at **Annexure-C**.

(iv) Tabular statements, as prescribed vide the Commission's circular dated 1.12.2008, shall continue and be kept objective and precise.

(v) Draft charge-sheets and imputation of charge in respect of suspect officials where disciplinary action, such as major penalty or minor penalty proceedings, is proposed, would accompany the investigation reports.

4. The CVOs would ensure that all documents/exhibits, constituting the basic evidence for the charge, are systematically identified and arranged. Superfluous and voluminous documents, with little or no relevance to the misconduct under examination, should be retained at the CVOs' end. In case any additional material or evidence is required, it can always be recalled by the Commission before an advice is tendered.

5. The aforesaid reporting procedure would become operative with immediate effect.

Shalini
6/8/09

(Shalini Darbari)
Director

All Chief Vigilance Officers

Encl: As proposed.

Annexure-A

Vigilance Report

Title of the report

1. **Source**

   - Background of the report – whether based on source information, complaint referred to by the CVC, CTE/CTE type inspection or direct enquiry.

2. **Gist of allegations**

3. **Facts**

   - The relevant facts relating to the issue under examination should be presented in chronological or activity-wise sequence.
   - Each fact should be supported by documentary evidence (other forms of evidence may also be presented) denoted as E1, E2, and E3 etc. Since the facts occur in chronological order, the evidence E1, E2, E3, etc., should necessarily be arranged under the report in the same order, thus making it easier for reference.
   - While annexing the evidence, the relevant portion of the document should be highlighted and annexed. For example, the evidence for educational qualifications for promotion should consist of the Xerox copy of only the clause prescribing the qualifications and not the whole 20 pages of the promotion policy.
   - There may be several issues in a report which may be conveniently arranged as different paras viz. 2.1, 2.2 etc.
   - All relevant facts needed to support the observations/conclusion should be gathered and presented. Irrelevant facts, bearing no consequence on the issues under inquiry should be avoided.
   - Evidence presented should be credible and adequate.

4. **Observations**

   - Ordinarily, observations are logical deductions arrived at through a set of facts. They are in the nature of objections or anomalies observed with reference to the gathered facts. There may be several observations arising out of the analysis of facts.

- Observations are also arrived at by evaluating the facts against certain criteria viz. rules, regulations, policies, procedures, norms, good practices or normative principles. Evidence of these criteria (extracts of rules, procedures, etc.) should also be presented as E1, E2, etc.

5. Response of the officials concerned

- It is necessary to elicit the reasons and clarifications of the management or the officers concerned for the anomalies pointed out in the observations. Every deviation from rules or procedure cannot be attributed to a malafide/corrupt intent. There may be situations where it may be difficult to achieve the objectives of a task by strictly abiding by the rules. Rules may be circumvented, while expediting the work or in the larger interest of the work, with good intentions. It is, therefore, essential for Vigilance to distinguish between acts of omission and acts of commission. Therefore, obtaining the response of the officers concerned is essential in order to arrive at an objective conclusion.
- Response of the management is also necessary in order to clarify differences in interpretation or an understanding of the issues between vigilance and the management.

6. Counter to the response

- In order to sustain the observations made by Vigilance, it is necessary to counter the defence given by the management/ officers concerned with facts and supporting evidence. It should be clearly and convincingly brought out why the explanation given by the management is not tenable.

7. Conclusion

- Conclusion is the logical summation of the observations. The observations denoting various counts of irregularity, lapses or impropriety should finally lead to a logical conclusion on whether the case involves commission of irregularity/ impropriety with the intention of corruption.
- Undue favour given to a party or obtained for self and its adverse impact on the government or the citizens in terms of

additional cost, poor quality or delayed service should be clearly highlighted.

8. Responsibility of officials

- Having determined the vigilance angle in the case, the next step is to fix the accountability of the individuals involved in the misconduct. Name of officers should be clearly stated in this para.
- The role of each officer should be judged with reference to his prescribed charter of duties. In case the tender committee is responsible for the misconduct then, as far as possible, all members should be equally and collectively held responsible.
- Comments of Disciplinary Authority should invariably be included.

9. Recommendation for action

- Recommendation for closure of the case in case there is no discernable vigilance angle or criminal misconduct, should be clearly spelt out.
- Bio-data of the officials reported against in the investigation report should be included in the given format.

10. Recommendation for systemic improvement

- Punitive action on detection of corruption does not by itself lead to a logical conclusion unless it is able to prevent recurrence of the lapse. Any fraud, corruption, irregularity or impropriety indicates a failure of control mechanism or gaps in systems and procedures. Therefore, each case throws up an opportunity to identify these control failures and suggest ways of plugging them to prevent recurrence of the lapse. Therefore, at the end of the report the CVO should also try to recommend systemic improvements in order to prevent the risk of a recurrence of the lapse/misconduct.

Annexure-B

ASSURANCE MEMO

This is to provide reasonable assurance to the Commission:

(a) That all necessary facts and relevant evidence have been gathered.

(b) That all facts and supporting evidence have been duly verified.

(c) That contested evidence, if any, have been conclusively handled with reference to the facts at the disposal of Vigilance.

Chief Vigilance Officer

Annexure C

Format of Bio-Data of officer(s) against whom Commission's advice is sought

(To be incorporated in the Vigilance Report of the CVO)

1.	Name of the officer	:
2.	Designation (a) At present (b) At the time of alleged misconduct	: :
3.	Service to which belongs (Cadre and year of allotment in case of officers of the organized/All India Services)	:
4.	Date of birth	:
5.	Date of superannuation	:
6.	Level/group of the present post and pay scale	:
7.	Date of suspension [if under suspension]	:
8.	Disciplinary Rules applicable to the officer	:

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CHAPTER – 10

SUSPENSION

(Rule 10 of CCS (CCA) Rules, 1965)

1. What is suspension?

Suspension is a temporary deprivation of office. The contract of service is not terminated. However, the Govt. servant placed under suspension is not allowed to discharge the functions of his office during the period of his suspension. It is not a penalty under the CCS (CCA) Rules, 1965. It is only an intermediate step. However, it visits the Government servant with civil consequences. An appeal lies against the order of suspension (**under Rule 23(i))** and the employee is entitled to receive subsistence allowance during the period of suspension.

1.2 An order of suspension should be made with considerable amount of care and thought. The number of suspended officials is to be kept at the minimum. Hence, before placing a Govt. servant under suspension, it should be found out whether the purpose could be achieved by transferring him to an other place or asking him to go on leave, etc.

2. Who can suspend? (Rule 10(1)

2.1 Before passing an order of suspension, the authority proposing to make the order should verify whether it is competent to do so. An order of suspension made by an authority not competent do so is illegal and will give cause of action for:

a) Setting aside of the order of suspension; and
b) Claim for full pay and allowances

2.2. The following authorities are empowered to place a Govt. servant under suspension:-

(i) Appointing authority or any authority to which the Appointing authority is subordinate.

(ii) Disciplinary authority.

(ii) Any other authority empowered in this behalf by the President of India by general or special order.

2.3 Whenever an Authority, lower than the Appointing Authority places a Govt. servant under suspension, the circumstances leading to suspension must be communicated to the Appointing Authority forthwith. However, such report need not be made in the case of an order of suspension made by the Comptroller and Auditor General in respect of a member of the Indian Audit and Accounts service and also in respect of a holder, other than a regular member of the Indian Audit and Accounts Service, of a post of Assistant Accountant General or equivalent.

2.4 Illustration: For the post of Assistant of Central Secretariat Service (CSS), 'President' is the appointing authority. However, 'Secretary' of the cadre authority is the disciplinary authority for imposition of the minor penalty. If the Secretary places an Assistant under suspension, then the circumstances leading to suspension must be communicated to the Appointing Authority.

2.5 Persons on deputation- [Rule 20 and Rule 21]
Where the services of a Government servant are lent by one department to another department or borrowed from or lent to a State Government or an authority subordinate thereto or borrowed from or lent to a local authority or other authority, the borrowing authority can suspend such Government servant under Rule 20. The lending authority should however, be informed forthwith of the circumstances leading to the Order of suspension.

3. When can a Government servant be placed under suspension? Rule 10(1)

3.1 As per rule 10(1) a government servant may be placed under suspension under the following three situations:

(i) Where a disciplinary proceeding is contemplated or is pending; or

(ii) Where in the opinion of the competent authority, he has engaged himself in activities prejudicial to the interest of the security of the State; or

(iii) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial[i];

3.2 When Government servant is involved in dowry death case.

Whenever a Govt. servant is involved in a dowry death case and a case has been registered by the police against him under Sec, 304-B of IPC, in the event of his arrest, he **shall** be placed under suspension irrespective of the duration of the custody. Even if he is not arrested, he will be placed under suspension immediately on submission of the report under sub-section (2) of Section 173 of the Cr.P.C, 1973 by Police to the Magistrate, if the report prima-facie indicates that the offence has been committed by the Government servant.

Guiding factor for deciding whether or not to place a Govt servant under suspension[ii]

3.3 Public interest should be the guiding factor in deciding whether or not a Government servant, including a Government servant on leave, should be placed under suspension; or whether such action should be taken even while the matter is under investigation and before a prima-facie case has been established.

3.4 Certain circumstances under which it may be considered appropriate to do so are indicated below for the guidance of competent authorities:

(i) Where the continuance in office of the Government servant will prejudice investigation, trial or any inquiry (e.g., apprehended tampering with witnesses or documents);

(ii) Where the continuance in office of the Government servant is likely to seriously subvert discipline in the office in which he is working;

(iii) Where the continuance in office of the Government servant will be against the wider public interest, e.g., if there is a public scandal and it is considered necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals, particularly corruption;

(iv) Where a preliminary enquiry into allegations has revealed a prima-facie case justifying criminal or departmental proceedings which are likely to lead to his conviction and/or dismissal, removal or compulsory retirement from service;

3.5. In the circumstances mentioned below, it may be considered desirable to suspend a Government servant for misdemeanors of the following types:

(i) an offence or conduct involving moral turpitude;

(ii) corruption, embezzlement or misappropriation of Government money, possession of disproportionate assets, misuse of official powers for personal gains;

(iii) serious negligence and dereliction of duty resulting in considerable loss to Government;

(iv) desertion of duty;

(v) refusal or deliberate failure to carry out written orders of superior officers.

In respect of the type of misdemeanor specified in sub clauses (iii), (iv) and (v), discretion should be exercised with care.

3.6 Without prejudice to the above guidelines, there are certain kinds of cases where the SPE will, invariably, advise that the officer should be placed under suspension. If the CBI recommends suspension of a public servant and the competent authority does not propose to accept the CBI's recommendation, it may be treated as a case of difference of opinion between the CBI and the administrative authority and the matter may be referred to the Central Vigilance Commission for its advice. Further, if a public servant had been suspended on the recommendation of

the CBI, the CBI may be consulted if the administrative authority proposes to revoke the suspension order.

3.7. A Government servant may also be suspended by the competent authority in cases in which the appellate, revising or reviewing authority, while setting aside an order imposing the penalty of dismissal, removal or compulsory retirement directs that de novo inquiry should be held; or that steps from a particular stage in the proceedings should be taken again; and considers that the Government servant should be placed under suspension even if he was not suspended previously. The competent authority may, in such cases, suspend a Government servant even if the appellate or reviewing authority has not given any direction about the suspension of Government servant.

3.8. A Government servant against whom proceedings have been initiated on a criminal charge but who is not actually detained in custody (e.g. a person released on bail) may be placed under suspension by an order of the competent authority under clause (b) of Rule 10 (1) of the Central Civil Services (Classification, Control and Appeal) Rules 1965. The Supreme Court in the case of Niranjan Singh and other vs. Prabhakar Rajaram Kharote and others (SLP No. 393 of 1980) have also made some observations about the need/desirability of placing a Government servant under suspension, against whom serious charges have been framed by a criminal court, unless exceptional circumstances suggesting a contrary course exist.

3.9. Therefore, as and when criminal charges are framed by a competent court against a Government servant, the disciplinary authority should consider and decide the desirability or otherwise of placing such a Government servant under suspension in accordance with the rules, if he is not already under suspension. If the Government servant is already under suspension or is placed under suspension, the competent authority should also review the case from time to time, in accordance with the instructions on the subject, and take a decision about the desirability of keeping him under suspension till the disposal of the case by the Court.

4. Deemed Suspension

4.1. Deemed suspension is a case when a Government Servant is considered to be under suspension without a conscious decision of any of the above mentioned authorities i.e. the rules create a legal fiction in which though no actual order is issued it is deemed to have been passed by operation of the legal fiction. Such a suspension is deemed to have arisen consequent to the happening of certain events. Nevertheless an order is required to be passed by the competent authority. Such deemed suspension fall under two categories

i. during the service period [Rule 10(2)] and
ii. in respect of the period when the Government servant ceased to be in service[Rule 10(3) and 10(4)]

4.2 Rule 10(2)

During the service period, a person is deemed to have been placed under suspension in the following cases:-

i) from the date of detention in custody (whether on criminal charge or otherwise) for a period exceeding 48 hours.

ii) from the date of conviction for an offence leading to imprisonment for a period exceeding 48 hours if he is not forthwith dismissed or removed or compulsorily retired consequent upon such conviction. (48 hours will be computed from the commencement of the imprisonment).

4.3 Government servant to intimate his arrest/conviction[iii]:

Although the Police Authorities will send prompt intimation of arrest and/or release on bail etc., of a Government servant to the latter's official superior as soon as possible after the arrest and/ or release indicating the circumstances of the arrest etc., but it is also the duty of the Government servant who may be arrested, or convicted, for any reason to intimate promptly the fact of his arrest/conviction and circumstances connected therewith to his official superior even though she/he might have been released on bail. Failure to do so will render him liable to disciplinary action on this ground alone.

4.4. Rule 10(3)-order of dismissal, removal compulsory retirement set aside by on Appeal or Review

When a Govt. servant already under suspension is dismissed, removed or compulsorily retired but such punishment is set aside on appeal or review and further enquiry is ordered, the order of suspension will be deemed to continue in force from the date of the order of the punishment. Such order shall remain in force until further orders. It may be noted that this rule gets invoked only if the Government servant was at the time of removal, dismissal or compulsory retirement was already under suspension and not if she/he was not under suspension at the time of compulsory retirement, removal or dismissal as the case may be.

4.5 Rule 10(4): Court setting aside the order of compulary retirement, removal, dismissal

A Govt. servant might have been dismissed or removed or compulsorily retired from service and a court of law might have set aside the penalty order or declared such order void. In such a case, if the disciplinary authority holds further enquiry into the case, then such Govt. servant is deemed to have been placed under suspension from the date of the original order of punishment. Such order will remain in force

until further orders. Further enquiry is to be held only if the Court has set aside the order of penalty on technical grounds (without going into the merits of the case). Further inquiry into the charges which have not been examined by the court can, however, be ordered depending on the facts and circumstances of the case.

4.6 There are two conditions which must be satisfied in order to attract the operation of Sub-rule (4) of Rule 10 of CCS (CCA) Rules, 1965. Firstly, the order of dismissal, removal or compulsory retirement must be set aside in consequence of a decision of a Court of Law. Secondly, the disciplinary authority must decide to hold a fresh enquiry on the allegations on which the order of dismissal, etc. was originally passed. (H. L. Mehra Vs. Union of India - AIR 1974 SC 1281).

5. Revocation of the order of suspension and the Review Committee.

5.1 The general rule is that an order of suspension made or deemed to have been made may at any time be modified or revoked by the competent authority(Rule 10(5)(c)].

5.2. The earlier position i.e. prior to 2004 was that unless the competent authority issued an order of revocation, the employee continued to remain suspended. This position has undergone a modification after amendment of the Rule 10 of the CCS (CCA) Rules and instructions issued in the year 2004[iv] and also in 2007[v].The present position is that an order of suspension made or deemed to have been made will not be valid after a period of 90 days unless it is extended after review by the Review Committee constituted. This review has to be done before expiry of ninety days from the effective date of suspension. If it is decided to further continue the suspension, it shall not be continued beyond 180 days at a time. After 180 days, the review has to be done again. [Rule 10(6)]. Thus the constitution of Review Committee and review of the suspension has been given a statutory basis which prior to amendment of Rule 10 was governed by executive instructions.

5.3. Detailed orders have also been issued by DoPT on 7/1/2004[vi] wherein each Department has been requested to set a Review Committee to review cases of suspension. The Review Committee may take a view regarding revocation/ continuation in view of the facts and circumstances of the case and also taking into account that unduly long suspension, while putting the employee concerned to undue hardship, involve payment of subsistence allowance without the employee performing any useful service to the Government. Without prejudice to the foregoing, if the officer has been under suspension for one year without any charges being filed in a court of law or no charge-memo has been issued in a departmental enquiry, he shall ordinarily be reinstated in service without prejudice to the case against him.

However, in case the officer is in police/judicial custody or is accused of a serious crime or a matter involving national, security, the Review Committee may recommend the continuation of the suspension of the official concerned.

5.4. It may, however, be noted that no review as mentioned above will be necessary in cases of orders of deemed suspension under Rule 10(2) when the Government servant continues to be under detention. Similarly in cases of 'deemed suspension, due to situations mentioned in para 4, the order of suspension shall continue to remain in force until it is modified or revoked.

Case law: In the case of Union of India V Dipak Mali [C.A.No.6661 of 2006 date of judgment 15.12.2009] the Supreme Court confirming the judgments of CAT and the High Court held that the suspension had lapsed in terms of rule 10(7) as it was neither reviewed nor extended. The respondent in this case who was working in the Gun Carriage Factory, Jabalpur was placed under suspension on 10.8.2002. But the suspension was not reviewed as required by sub-rule (6) of Rule 10 which took effect from 2.6.2004.[Union of India V Dipak Mali C.A.No.6661 of 2006 date of judgment 15.12.2009]

6. Duration of the order of suspension-Rule 10(6) and 10(7)

6.1 Though suspension is not a punishment, it constitutes a great hardship for a Government servant. It also involves payment of subsistence allowance without the employee performing any useful service to the Government. In fairness to him/her, the period of suspension should be reduced to the barest minimum. As per the latest rule position mentioned above, the order of suspension (other than deemed suspension) could initially be for a maximum period of 90 days which if not continued by the review committee automatically stands revoked. If continued further by the competent authority on the recommendation of the review committee, it can be for a maximum period of 180 days at a time.

6.2 The review Committee may take a view regarding revocation/continuation of the suspension keeping in view the facts and circumstances of the case.If an officer has been under suspension for one year without any charges being filed in a court of law or not charge memo has been issued in a departmental enquiry, he shall ordinarily be reinstated in service without prejudice to the case against him. However, in case the officer is in police/judicial custody or is accused of a serious crime or a matter involving national security the Review Committee may recommend the continuation of the suspension of the official concerned.

7 Suspension not to be ordered in minor penalty cases[vii].

On the conclusion of the disciplinary proceedings, if a minor penalty is imposed, suspension is regarded as unjustified and full pay and allowances and other consequential benefits are given to him and the period of suspension is treated as duty.

8. Format of the order of suspension

8.1 A government servant can be placed under suspension only by a specific order in writing by the Competent Authority. A standard form in which the order should be made is given in part-II[viii].

8.2 In cases of deemed suspension under Rule 10(2), 10(3) or 10(4), suspension will take effect automatically even without a formal order of suspension. However, it is desirable for purposes of administrative record to make a formal order (Standard form in Part-II).

Format may have to be modified to fully meet the requirements of the individual case.

8.3 In all the cases the standard form may not fully meet the requirements of the particular case and hence the language of the order may have to suitably modified or adopting them to suit the requirement of the individual cases. For example, if at the time the Government Servant is being placed under suspension, apart from a criminal offence which is under trial there is also certain other disciplinary case under contemplation, as well as criminal cases under investigation, which is also being taken into consideration for placing the Government Servant under suspension, the order of his suspension should indicate all the cases (criminal/departmental under investigation/trial/contemplation) on the basis of which it is considered necessary to place the Government servant under suspension so that in the event of the reinstatement, the outcome of all such cases can be taken into account, while regulating the period of suspension.[ix]

8.4 In case where the Government servant is under suspension(whether in connection with any disciplinary proceeding or otherwise) and any other case is initiated against him and the competent authority considers it necessary that the Government servant should remain under suspension in connection with that case also, the competent authority should pass fresh orders on the Government servant's suspension with specific reference to all the cases against the Government servant so that in the event of reinstatement of the Government servant in one case the facts of other cases can also be taken into account while regulating the period of suspension[x].

8.5 Copy of the order should be endorsed to the CVC also in cases involving a vigilance angle in respect of employees in whose case the Commission's advice is necessary.

9. Date of Effect of order of suspension

9.1 Except in case of 'deemed suspension' which may take effect from a retrospective date; an order of suspension can take effect only from the date on which it is made. Ordinarily it is expected that the order will be communicated to the Government servant simultaneously.

9.2 Difficulty may, however, arise in giving effect to the order of suspension from the date on which it is made if the Government servant proposed to be placed under suspension:

a) is stationed at a place other than where the competent authority makes the order of suspension;
b) is on tour and it may not be possible to communicate the order of suspension;
c) is an officer holding charge of stores and /or cash, warehouses, seized goods, bonds etc.
d) A person on leave or who is absent unauthorisedly

9.3 In cases of types (a) and (b) above, it will not be feasible to give effect to an order of suspension from the date on which it is made owing to the fact that during the intervening period a Government servant may have performed certain functions lawfully exercisable by him or may have entered into contracts. The competent authority making the order of suspension should take the circumstances of each such case into consideration and may direct that the order of suspension will take effect from the date of its communication to the Government servant concerned.

9.4 In case of (c) it may not be possible for the government servant to be placed under suspension to hand over charge immediately without checking and verification of stores/cash etc. In such cases the competent authority should, taking the circumstances of each case into consideration, lay down that the checking and verification of stores and/or cash should commence on receipt of suspension order and should be completed by a specified date from which suspension should take effect after formal relinquishment of charge.

9.5 In case of (d) there should not be any difficulty in the order of suspension operating with immediate effect. It should not be necessary to recall a Government servant if he is on leave for the purpose of placing him under suspension. When a Government servant is placed under suspension while he is on leave, the unexpired portion of the leave should be cancelled by an order to that effect.

10. Subsistence allowance

10.1 A Government servant placed under suspension or deemed suspension is not entitled to salary but is entitled to draw for the first three months subsistence allowance at an amount equal to leave salary during half pay or half average pay plus dearness allowance as admissible on such amount (i.e. pro-rata) but CCA and HRA as admissible to him before suspension. The matter is regulated by the provisions of F.R.53. The order for subsistence allowance should be passed simultaneously with the order of suspension or as early as possible to avoid hardship to the concerned Government servant[xi].

10.2 Review of Subsistence Allowance: If the period of suspension exceeds 3 months, the amount of subsistence allowance may be increased or decreased upto a maximum of 50% of the amount being drawn by him during the first three months, depending on whether the reasons for continued suspension are attributable directly or indirectly to the Government servant. In view of the fact that any failure on the part of the Competent authority to pass on order for an increase or decrease of the subsistence allowance, as soon as the suspended officer has been under

suspension for three months, can either invoke unnecessary expenditure to Government, it should be ensured that action is initiated in all such cases and a decision is taken in sufficient time before the expiry of the first three months so that the requisite order could take effect as soon as the suspended officer has completed the first three months. Under FR 53 it is obligatory to take such action before the expiry of the first three months.

11. Speedy investigation into cases in which an officer is under suspension[xii]

11.1 To avoid unduly long suspension, investigation into cases of officers under suspension should be given high priority and every effort should be made to file the charge sheet in the court of competent jurisdiction in cases of prosecution or serve the charge sheet on the officers in cases of departmental proceedings within three months of the date of suspension and in cases in which it may not be possible to do so, the disciplinary authority should report the matter to the next higher authority explaining the reasons for delay (O.M.No.39/39/70-Estt.(A) dated 4/2/1971). In cases which are taken up by, or are entrusted to the CBI for investigation, the limit of 3 months will be reckoned from the date on which the case is taken up for investigation by the CBI.

11.2 If investigation is likely to take more time, it should be considered whether it is still necessary, taking the circumstances of the case into account, to keep the officer under suspension or should the order to be revoked and if so whether the officer could be permitted to resume duty on the same post or transferred to another post or office.

11.3 When an officer is suspended either at the request of the Central Bureau of Investigation or on the Department's own initiative in regard to a matter which is under investigation or inquiry by the CBI or which is proposed to be referred to CBI, a copy of the suspension order should be sent to the Director, CBI with an endorsement thereof to the Special Police Establishment Branch concerned. To reduce the time-lag between the placing of an officer under suspension and the reference of the case to the CBI for investigation such cases should be referred to the CBI promptly after suspension orders are passed if it is not possible to refer them before the passing of suspension orders.[xiii]

11.4 Instructions contained in above paragraphs aim at reducing the time taken in investigation into cases of officers under suspension and speeding up the progress of cases at the investigation stage. They do not in any way abridge the inherent powers of the disciplinary authority in regard to review of cases of government servants under suspension at any time either during investigation or thereafter. The disciplinary authority may review periodically the cases of suspension in which charge sheets have been serviced/filed to see:

a) Whether the period of suspension is prolonged for reasons directly attributable to the Government servant;

b) What steps could be taken to expedite the progress of court trial/departmental proceedings;

c) Whether the continued suspension of the officer is necessary having regard to the circumstances of the case at any particular stage; and

d) Whether having regard to the guidelines stated in paragraph 2 regarding the circumstances in which a Government servant may be placed under suspension, the suspension may be revoked and the Government servant concerned permitted to resume duty at the same station or at a different station.

In cases of suspension being revoked and the Government servant allowed to resume duty, an order regarding the pay and allowances to be paid for the period of suspension from duty and whether or not the said order shall be treated as a period spent on duty can be made only after the conclusion of the proceedings against him.

12. Reasons for suspension to be communicated[xiv].

12.1 A government servant placed under suspension has a right of appeal under Rule 23(i). This would imply that he/she should generally know the reasons leading to his/her suspension. In cases when a Government servant is suspended because a disciplinary case is pending or a case against him in respect of any criminal offence is under investigation, inquiry or trial, the order of suspension would itself mention the reasons and the Government servant would be aware of the reasons leading to his suspension.

12.2 Where a Government Servant is placed under suspension on the ground of "contemplated" disciplinary proceedings, the existing instructions provide that every effort would be made to finalise the charges within three months of the date of suspension. If these instructions are strictly adhered to, a Government servant who is placed under suspension would become aware of the reasons for his suspension without much loss of time. In some cases where it may not be possible for some reason or the other to issue the charge sheet within three months, reasons for suspension should be communicated to the Government servant concerned immediately on the expiry of the aforesaid time-limit prescribed for the issue of charge sheet, so that he may be in position to effectively exercise the right of appeal available to him under Rule 23(1) if he/she so desires. Where the reasons for suspension are communicated on the expiry of a time-limit prescribed for the issue of a charge sheet, the time limit of 45 days for submission of appeal should be counted from the date on which the reasons for suspension are communicated.

12.3 The above procedure will not, however, apply to cases where a Government servant is placed under suspension on the ground that he has engaged himself in activities prejudicial to the interest of the security of the State.

13. Jurisdiction of Election Commission over Government servants deputed for election duties for ordering suspension and recommending disciplinary action.

13.1 One of the issues in Writ Petition© No.606/1993 in the matter of Election Commission V UoI & Others was regarding jurisdiction of Election Commission of India over the Government servants deputed for election duties. The Supreme Court by its order dated 21.09.2000 disposed of the said petition in terms of the settlement between the union of India and Election Commission of India. The said terms of settlement are as under:-

13.2 The disciplinary functions of the Election Commission over officers, staff and police deputed to perform election duties shall extend to:

a) Suspending any officer/official/police personnel for insubordination or dereliction of duty;
b) Substituting any officer/official/police personnel by another such person, and returning the substituted individual to the cadre to which he belongs, with appropriate report on his conduct;
c) Making recommendation to the competent authority, for taking disciplinary action, for any act of insubordination or dereliction of duty, while on election duty. Such recommendation shall be promptly acted upon by the disciplinary authority, and action taken will be communicated to the Election Commission, within a period of 6 months from the date of the Election Commission's recommendation.
d) The GoI will advise the State Governments that they too should follow the above principles and decisions, since a large number of election officials are under their administrative control.

13.3 The implication of the disposal of the Writ Petition by the Supreme Court in terms of the above settlement is that the Election Commission can suspend any officer/official/police personal working under the Central Government or Public Sector Undertaking or an Autonomous Body fully or substantially financed by the Government for insubordination or dereliction of duty and the Election Commission can also direct substituting any officer/official/police personnel by another person besides making recommendations to the Competent Authority for taking disciplinary action for insubordination or dereliction of duty while engaged in the preparation of electoral rolls or election duty.

13.4 It is not necessary to amend the service rules for exercise of powers of suspension by the Election Commission in this case since these powers are derived from the provisions of section 13CC of the Representation of People Act, 1950 and section 28A of the Representation of People Act 1951 since provisions of these Acts would have overriding effect over the disciplinary rules. However, in case there are any conflicting provisions in an Act governing the disciplinary action, the same are required to be amended suitably in accordance with the terms of settlement given above.[xv]

Election Commission to be mandatorily consulted if the matter is decided to be closed on reply of the employee.

13.5 It shall be mandatory for the disciplinary authority to consult the Election Commission if the matter is proposed to be closed only on the basis of a written explanation given by the officer concerned to enable the Commission to provide

necessary inputs to the disciplinary authorities before the disciplinary Authorities take a final decision[xvi].

14. **Regularisation of the period of suspension**:

14.1 Provisions relating to regularization of the period of suspension are contained in Fundamental Rules (FR) 54, 54A and 54 B. Broadly, the provisions are:

(a) When the proceedings do not lead to imposition of any penalty, the entire period of suspension will be treated as duty and the Government Servant will be entitled for full pay and allowances for the above period.

(b) Same will be the position, when at the end of the proceedings, only minor penalty is imposed.

(c) In case of death before conclusion of the proceedings, the period of suspension shall be treated as duty and full pay and allowances shall be paid to the family.

(d) Otherwise, the authority ordering suspension will have to take a view as to whether the suspension was wholly unjustified and decide the issue depending upon the facts and circumstances of the case.

14.2 Where the Govt. servant who was under suspension is fully exonerated in a Departmental proceeding or acquitted by the Court in a Criminal trial, the period of suspension is treated as wholly unjustified. The period is treated as duty for all purposes and he is paid full pay and allowances for the period of suspension less the subsistence allowance already drawn by him.

14.3 Where a major penalty is imposed on the Govt. servant, the period of suspension will be regularised by the competent authority after giving a show cause notice to the Govt. servant and allowing him a maximum time of 60 days to represent. The period of suspension will be regularised as ordered by the competent authority. The Govt. servant shall not be entitled to full pay and allowances for the period. He can be paid any amount less than 100% of his pay but it will not be less than the amount already drawn by him as subsistence allowance.

14.4 FR 54-B(2) provides that the period of suspension may also be treated as leave due and admissible at the request of the Govt. servant. In such a case if the leave salary admissible works out to be less than the amount already paid as subsistence allowance than the excess amount shall have to be recovered.

15. **Administrative effects of suspension**

(i) Grant of advance for purchase of conveyance shall not be granted to a Govt. servant under suspension. (Rule 200 GFRs)

(ii) Grant of House Building Advance is admissible.

(iii) A suspended Govt. servant can function as a Defence assistant subject to the fulfillment of other conditions.

(iv) Entry card/Identity card should be withdrawn, if issued for entry in the office.

(iii) If death occurs during suspension, the period of suspension will be treated as duty and family will get full pay and allowances for the period less subsistence allowance already drawn.

(vi) Leave :- FR 55 provides that leave may not be granted to a Govt. servant under suspension.

(vii) LTC :- Since no leave can be granted to a Govt. servant under suspension, he cannot avail of LTC for himself. There is, however, no bar to the members of his family availing of LTC.

(viii) Lien :- A Govt. servant under suspension retains his lien during suspension period.

(ix) A suspended Govt. servant should not be asked to mark attendance.

XI. Headquarters of a Govt. servant under suspension:-

The headquarters of a Govt. servant under suspension should normally be assumed to be his last place of duty. However, where an individual under suspension requests for a change of headquarters, the competent authority may change the headquarter if it is satisfied that such a course of action will not put the Government to any expenditure like grant of T. A. etc. or create difficulty in investigations or in processing the departmental proceedings etc.. [xvii]

XII. Resignation during suspension[xviii]:-

When a Govt. servant under suspension submits resignation, the competent authority will consider whether it would be in public interest to accept the resignation. Normally, it would not be accepted except where allegations do not involve moral turpitude or where evidence is not sufficient to prove the charges leading to removal/dismissal or where proceedings are likely to be protracted and it would be cheaper to the exchequer to accept the resignation. In the case of Group C & D employees' prior approval of Head of the Department will be necessary. Approval of Minister would be needed in the case of Group A & B employees. Where departmental action has been initiated on the advice of CVC/C&AG in the case of Group A & B Gazetted officers, their concurrence should be obtained before submitting the file to Minister for approval.

XIII. Retirement on superannuation:-

On attaining the age of superannuation, a Govt. servant will be retired even if he is placed under suspension. He will not get subsistence allowance but will draw provisional pension under Rule 69 of CCS (Pension) Rules, 1972.

Writing of ACRs by an officer under suspension[xix].

An officer under suspension can write/review ACRs of his subordinate within two months from the date of hs suspension or within one month from the date on which the report was due. But no officer under suspension can write/review ACRs of his subordinates if during major part of writing/review he is under suspension. It is because she shall not have full opportunity to supervise the work of his subordinates.

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[i] 'Investigation' under the criminal Procedure Code includes all proceedings under the code for collection of evidence. Investigation starts after the F.I.R has been registered. It is a stage before either the inquiry or trial. 'Inquiry' includes every inquiry other than 'trial'. The 'inquiry' and 'trial' in a criminal case do not go hand in hand.[B.B.Mondal V State, AIR 1974lab.IC(Cal). 606].
[ii] MHA O.M.No.43/56/64-AVD dated 22.10.1964.
[iii] Ministry of Home Affairs O.M.o.25/70/49-Estt dt.26/12/1949.
[iv] DOP&T notification No.11012/4/2003-Estt.(A) dated 2.4.2004 directed that the notification of even number dated 23.12.2003 which inserted sub rule (6) and (7) of Rule 10 shall come into force w.e.f.2.6.2004
[v] Notification No.11012/4/2003-Estt.(A) dated 6.6.2007 substituted sub-rule 5(a) and (7) of Rule 10
[vi] DOP&T's O.M.No.11012/4/2003-Estt(A) dated 7.1.2004.Detailed instructions on the review of suspension and also the composition of the review committee in cases when (i) Displinary Authority is President (ii) when Appellate Authority is President and (iii) when Disciplinary Authority is not the President is contained in the said O.M.
[vii] DOP&T OM NO. 11012/15/85-Estt(A) dated 3.12.1985)
[viii] To be reproduced at the end of the chapter.
[ix] DP & AR O.M.No.109/3/80-AVD-I dated 21.7.1980
[x] -do-
[xi] DOP&T O.M.No.11021/17/85-Estt.(A) dated 28.10.85
[xii] Page 71 CVC
[xiii] CVC manual vol-I.
[xiv] DP & AR O.M.No.35014/1/81-Estt.(A) dated 9.11.1982
[xv] DOP&T O.M.No.11012/7/98-Estt(A) dated 7.11.2000
[xvi] DOP&T's O.M.No11012(4)/2008-Estt(A) dated 28.7.2008
[xvii] MHA OM No. 39/5/56-ESTs (A) dated 8.9.1956)
[xviii] DoPT's O.M.No.
[xix] DOP&T O.M.No.21011/8/2000-Estt(A) dated 25.10.2000

CHAPTER - 11

MINOR PENALTY PROCEEDINGS

1. What are distinguishing features between Major and Minor Penalties?

The distinction between Major and Minor penalties may be perceived from three angles viz. what, who and how.

Firstly, minor penalties are lighter penalties whereas major penalties are heavier penalties. It is noteworthy, that till the amendment in August 2004, incorporating clause (iii) (a) [reduction to lower stage by one stage without cumulative effect ….] recovery from pay of loss caused was the only penalty wherein the delinquent had to lose money. Otherwise, none of the minor penalties had the effect of taking away any benefit enjoyed by the delinquent. On the contrary, the major penalties result in deprivation of the benefits/position enjoyed by the delinquent such as loss of employment, etc.

Secondly, major penalties could be imposed only by the Appointing Authority whereas authorities subordinate to the Appointing Authority have been designated to impose minor penalties.

Thirdly, major penalties can be imposed only after conducting a detailed oral hearing as provided for under Rule 14 of the CCA Rules, unless conduct of Inquiry has been dispensed with under any of the provisions under the second proviso to Article 311 (2) which has been reproduced in Rule 19 of the CCA Rules. Against this, ordinarily, under normal circumstances, minor penalty can be imposed after issue of memorandum and perusal of the response of the delinquent.

2. What are the extra-ordinary circumstances when even for imposition of minor penalty, a detailed oral hearing is to be conducted?

The circumstances when detailed oral hearing is held for imposition of minor penalty fall under two broad categories viz. optional and obligatory.

(a) Rule 16(1)(b) of the CCA Rules provide that even for imposing a minor penalty, detailed oral hearing as provided for in Rule 14(3) to 14(23) of the CCA Rules may be held in every case in which the Disciplinary authority is of the opinion that it is necessary. Disciplinary authority's decision to conduct detailed oral hearing may be either suo mottu or based on the request of the delinquent. Generally, where either of the parties may rely on oral evidence, it would be necessary to conduct oral hearing. If the evidence is purely documentary in nature, there may not be any need for conducting detailed oral hearing unless the case is covered by the provisions relating to obligatory conditions as explained hereunder.

(b) As per sub Rule (1-A) of Rule 16 of the CCA Rules it is mandatory to conduct detailed oral hearing provided for in Rule 14(3) to 14(23) of the CCA Rules, if it is proposed, after considering the representation of the delinquent employee if:

(i) it is proposed to impose the penalty of withholding of increments of pay and the same is likely to affect the amount of pension payable to the delinquent employee; or

(ii) it is proposed to impose the penalty of withholding of increments of pay for a period exceeding three years; or

(iii) it is proposed to impose the penalty of withholding of increments of pay with cumulative effect for any period.

3. Does not the imposition of penalty without oral hearing amount to denial of reasonable opportunity or violation of the principles of natural justice?

State of Punjab Vs. Nirmal Singh [JT2007(10)SC31, (2007)8SCC108] is a case based on Punjab Civil Services (Punishment & Appeal) Rules 1970. In this case, the individual had challenged the award of minor penalty without providing him personal hearing. Rejecting his submission, the Hon'ble Supreme Court held that

> *"6. Rule 21 of the Punjab Civil Service (Punishment & Appeal) Rules, 1970 deals with the review. A perusal of the aforesaid rule shows that there is no provision of personal hearing in regard to inflicting minor penalties. The Rule contemplates a personal hearing only when the Disciplinary Authority proposes to impose any of the major penalties specified in Clauses (v) to (ix) of Rule 5 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses. Admittedly, by an order dated 20.10.2003, the respondent was inflicted punishment of stoppage of two increments with cumulative effect, which is a minor punishment. The High Court, in our view, was clearly in error in setting aside the order dated 24.6.2004 passed by the Competent Authority on the ground of violation of principles of natural justice."*

[it needs to be noted that in Rule 10 of the Punjab Civil Service (Punishment & Appeal) Rules 1970, dealing with the Procedure for imposing minor penalty, provision corresponding to sub-rule (1-A) of Rule 16 of CCA Rules was not available. Therefore, detailed oral hearing was not mandatory, even for withholding of increment with cumulative effect.]

4. What is the advantage of taking recourse to minor penalty proceedings?

Minor penalty proceedings can be concluded with minimum loss of time. In most of the cases, final order in a minor penalty proceedings could be passed in less than four weeks of framing of charges, unless consultation with UPSC is necessary. As rightly observed by the Hota Committee, "a minor penalty swiftly but judiciously

imposed by a Disciplinary Authority is much more effective than a major penalty imposed after years spent on a protracted Inquiry."

5. What is the procedure for imposing minor penalty?

The following are the steps involved in imposition of minor penalty:

(a) A memorandum is issued together with a statement of imputations of misconduct or misbehavior.

(b) Any documentary evidence in support of the charge may have to be annexed to the charge memorandum or made available to the delinquent official.

(c) The delinquent official may be allowed time up to 10 days for submitting reply.

(d) Any request for extension of time may be considered objectively subject to conditions of reasonableness

(e) Any request for inspection of records or copies of documents may be allowed if its denial will amount to denial of reasonable opportunity

(f) On examination of the reply of the charged officer, or on expiry of the time allowed for submitting reply, a reasoned order may be passed

6. Can minor penalty be imposed on conclusion of proceedings for imposition of a major penalty?

There is no objection to impose minor penalty on conclusion of the proceedings under Rule 14 of CCA Rules for imposition of major penalty, if the disciplinary authority feels that minor penalty is adequate to meet the ends of justice

7. Can an authority competent to impose major penalty initiate and conduct minor penalty proceedings?

There is no embargo for a higher disciplinary authority to initiate and conduct minor penalty proceedings. However, such circumstances should not lead to raising of eyebrows.

8. If the authority competent to impose major penalty had initiated and conducted major penalty proceedings, can such authority impose minor penalty or it will have to direct the lower disciplinary authority to impose minor penalty.

MHA OM No. 6/26/60-Ests.(A) dated 18 June 1962 provides that where a disciplinary proceedings for imposition of major penalty has been initiated by a higher disciplinary authority, final orders should also be passed by such authority only and the case should not be remitted to the lower disciplinary authority.

As a natural corollary, appeal should be dealt with by the next higher authority

CHAPTER – 12

DRAFTING AND ISSUE OF CHARGE SHEET

1. What is a charge?

Para 14.2 of Chapter X of the Vigilance Manual (Fifth Edition 1991) provides as under:

> A charge may be described as the prima-facie proven essence of an allegation setting out the nature of the accusation in general terms, such as, negligence in the performance of official duties, inefficiency, acceptance of sub-standard work, false measurement of work executed, execution of work below specification, breach of a conduct rule, etc. a charge should briefly, clearly and precisely identify the misconduct/misbehavior. It should also give time, place and persons or things involved so that the public servant concerned has clear notice of his involvement.

A charge is essentially an omission or a commission. It articulates that the charged official has committed something which should not have been done or has failed to do something which he ought to have done.

2. What is the significance of ***issue*** of charge sheet?

Issue of charge sheet is the discharge of the Constitutional obligation cast by Article 311(2) which states "*No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity…'*

It is also the compliance of the principle of natural justice which states – "*No one can be condemned unheard"* which has been codified in the constitutional provisions under Article 311(2).

3. Who is to decide about the issue of charge sheet?

Disciplinary Authority, who takes cognizance of the misconduct, is the appropriate authority to decide as to whether formal disciplinary proceedings are to be initiated against the government servant or warning or counseling is to be administered.

In cases where a preliminary investigation has been conducted, the disciplinary authority may take a decision based on the preliminary investigation report.

In the cases falling within the purview of the Vigilance Commission, first stage advice of the Commission is also taken into consideration when the above decision is taken.

4. Can the authority who is competent only to impose minor penalty, initiate proceedings for imposition of major penalty?

Yes. Rule 13 (2) of the CCA Rules provides that an authority who is competent only to impose minor penalties can institute proceedings for imposition of major penalties also.

Government of India Department of Telecom Letter No. 68/7/89-Vig.II dated 28 Jul 1987 further provides that if at the end of the proceedings, the above authority reaches the conclusion that imposition of minor penalty will make the ends of justice meet, such authority may impose the penalty without referring the case to the higher authority who is competent to impose major penalty.

Needless to add that if at the end of the proceedings, it is felt that major penalty is to be imposed, the case will be submitted to the authority who is competent to impose major penalty.

5. At what level the decision to initiate the proceedings is taken in respect of the cases wherein the President is the Disciplinary Authority?

As clarified in Ministry of Home Affairs Memo No. F/30/1/6-Ests(A) dated 16 Apr 1969, having regard to the Transaction of Business Rules, decision in such cases are to be taken by the Minister concerned.

6. Can proceedings under CCA Rules be initiated when a criminal case is in progress?

There is no hard and fast rule in this regard. Every case needs to be decided on its own merits. If the criminal case is about a misconduct relating to employment such as acceptance of illegal gratification, corruption, etc. there might not be any bar on initiating departmental proceedings pending criminal prosecution. When the criminal case is complex in nature and involves questions of fact and law, it may not be capable of being handled departmentally. However, there is no bar on simultaneous departmental proceedings.

Normally the employee concerned would object to the departmental proceedings on the plea that by participating in the departmental proceedings, the delinquent would be compelled to disclose his/her defence in advance and the same would seriously prejudice defence in the criminal case. Consequences of staying the departmental proceedings are too well known to need any recapitulation. The reason cited by the delinquent cannot be accepted as a blanket sanction for stay of departmental proceedings as stated in State of Rajasthan v. B.K. Meena and Ors. [(1997)ILLJ746SC] in the following terms:

> *"The only ground suggested in the decisions of the Supreme Court as constituting a valid ground for staying the disciplinary proceedings is that "the defence of the employee in the criminal case may not be prejudiced". This ground has, however, been hedged in by providing further that this may be*

done in cases of grave nature involving questions of fact and law. It means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', desirability', or propriety, as the case may be, of staying the departmental enquiry has to be determined in each case taking into consideration all the facts and circumstances of the case. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the Supreme Court's decisions."

As pointed out in Kendriya Vidyalaya Sangathan and Ors. Vs. T. Srinivas [JT2004(6) SC 292, (2004)7SCC442], the general rule is that parallel proceedings are permissible:

"9. A reading of M. Paul Anthony's case (supra) it is noted that there is consensus of judicial opinion on the basic principle that proceedings in a criminal case and departmental proceedings can go on simultaneously, however this court noticed that certain exceptions have been carved out to the said basic principle."

If however, the employee obtains a stay order from the court against parallel proceedings, departmental proceedings must be stayed forthwith and legal advice sought regarding the possibility of getting the stay vacated.

7. What are the four Annexures to the charge sheet?

Annexure – I	: Articles of Charge
Annexure – II	: Statement of imputations of misconduct or misbehavior
Annexure – III	: List of Documentary evidence in support of the charges
Annexure – IV	: List of Oral witnesses in support of the charges

8. How many charges may be included in a single charge sheet?

There is no limit about the number of charges in a charge sheet. It must however be ensured that a charge should relate to a single transaction. For example, if an employee has committed fraud in three Money orders, these may be shown as three distinct charges. The reasons are not far to seek. Each instance of misconduct is independent of the rest and each instance will depend on distinct evidence. Showing them as distinct charges will facilitate the proof of each charge irrespective of the outcome in respect of other charges.

9. When an inquiry is underway, would it be proper to issue another charge sheet against the same employee in respect of some other misconduct(s), without withdrawing the earlier charge sheet?

This question was addressed by the Hon'ble Supreme Court in Indian Drugs and Pharmaceuticals Ltd. and Anr. Vs. R.K. Shewaramani. [JT 2005 (6), (2005)6 SCC76]

In this case, a charge sheet was issued on 27.9.1989, alleging that the respondent-employee had not joined the transferred post. There was another set of charges and a second charge sheet in respect of these charges was issued on 12.12.1989. While these two charges were pending consideration in departmental proceedings, action in terms of Rule 30A of the Industrial Drugs and Pharmaceutical Ltd. Conduct Discipline and Appeal Rules, 1978 (in short the 'Rules') was taken. A show-cause notice was issued requiring the respondent to show cause as to why his services shall not be terminated on account of unauthorized absence from duty exceeding 30 days. While allowing the appeal of the employer, Hon'ble Supreme Court held as under:

> *10. There is no requirement in law that for continuing with fresh proceedings the charge sheet issued must indicate that the previous proceedings pending have been given a go by. The employer is free to proceed in as many departmental proceedings as it considers desirable. Even in a hypothetical case in two of the departmental proceedings the finding is in favour of the delinquent employee, yet in another departmental proceeding finding adverse to the delinquent officer can be recorded. Merely because the two proceedings were pending, that did not in any way stand on the way of the employer to initiate another departmental proceeding and that too on the basis of an amended provision which came into effect after initiation of the previous departmental proceeding.*

10. Can more than one charge sheet be issued to the same employee in respect of the same misconduct?

or

11. Can a charge sheet be issued in respect of a misconduct for which an inquiry was held in the past and it was decided to drop the charges?

Facts in Mukesh Ali Vs.State of Assam and Anr.[JT2006(6)SC111, (2006)5SCC485, [2006]Supp(3)SCR228] were that a charge sheet was served on the Appellant on 29.7.1997. The Enquiry Officer, after concluding the enquiry, submitted his Report along with enclosures wherein it was found that the appellant was not guilty of the alleged offence. The report was submitted on 25.4.2000. On 1.11.2000, proceedings against the appellant were dropped with order directing that the suspension period of the appellant from 16.9.1994 to 12.12.1994 be treated as on duty. Administrative authorities issued a show cause notice to the appellant on 20.10.2010, for re-opening the earlier proceedings, purportedly based on a direction dated 12.5.2001, of the Hon'ble Supreme Court. Clarifying that its directions dated 12.5.2001 was prospective in nature and did not cover the case of the appellant, the Hon'ble Supreme Court held:

> *"8. …… Hence, in our view, the learned single Judge and the learned Judges of the Division Bench completely misinterpreted and misread paragraphs 27 and 12 of the orders dated 15.1.1998 and 12.5.2001 respectively passed in W.P.(C) No. 202 of 1995 in coming to the conclusion*

that the case of the appellant was covered by the aforesaid two orders of this Court. The findings of the High Court, if followed, would create a chaos as it would mean that by virtue of the aforesaid orders passed by this Court all departmental proceedings concluded in the past would become liable to be opened as that would never have been intended by this Court.

xxx

10. This Court also did not intend to give retrospective operation of the two orders passed by it referred to in paragraphs supra and, therefore, the adequacy of the action taken cannot be a reason for reopening the concluded issue. This Court's directions were not intended to allow the State Government to reopen all or any proceeding which was logically concluded by accepting the enquiry report in which the State- respondents gave warning just cautioning to be careful in future as no direct guilt or wrong was attributed to the appellant by the enquiry officer. Hence, in our view, the order dated 1.11.2000 dropping the proceedings by the Government cannot be termed as letting the appellant off for any reason or any account of any laxity or lapse in the enquiry proceedings.

12. What is the base material in preparing the Charge sheet?

Normally, the drafting of charge sheet is taken up based on the preliminary investigation report. Bulk of the material forming part of Annexure – II of the Charge Sheet can be taken from the Preliminary Investigation Report.

13. What is the '*Charge – Fact – Evidence*' co-relation?

A Charge emerges from a set of facts and the facts rest on evidence. For example, the charge of submission of a false LTC Claim, may emerge from the following facts:

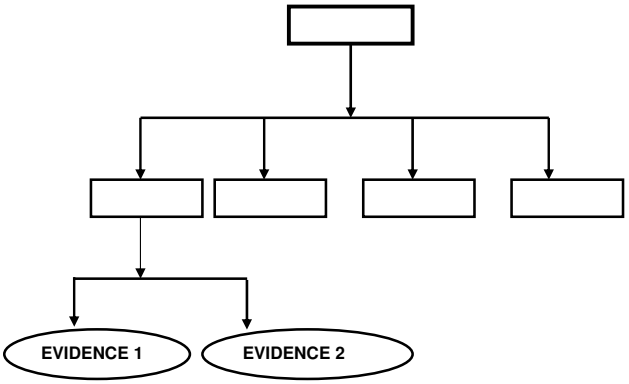
(a) The employee applied for leave
(b) There was a mention in the leave application about the intention of availing LTC for self and family'
(c) There was a request for grant of advance
(d) Advance amounting to xxx was granted to the employee
(e) The employee availed leave
(f) The employee on joining after leave, submitted a LTC Claim
(g) That on verification of ticket from the Railway it was revealed that the ticket having PNR number mentioned by the employee in the claim was cancelled a few days before the journey.

The above facts will rest on the following evidence:

(a) Leave application wherein the employee had mentioned his intention to avail LTC
(b) Application for sanction of advance

(c) Order sanctioning LTC Advance
(d) Evidence in support of the fact that advance was availed by the employee
(e) Claim made by the employee containing the disputed PNR number
(f) Intimation from the railway authorities to the effect that the ticket having the disputed PNR number was cancelled a few days before the journey.

The above relation may be schematically presented as under:



14. How the Articles of Charge are framed?

For deciding the articles of charge, one must go through the preliminary investigation report and list all the charges that come to his/her mind in the relevant case – such as theft, negligence, non-compliance of departmental instructions, failure to safeguard government property, facilitating theft, etc. Then all those charges must be arranged in the ascending or descending order of seriousness. This must be based on common sense. For example, common sense would tell as that theft, embezzlement are more serious charges than negligence and non-compliance of instructions. After arranging the likely charges in the order of seriousness, one should ask against the most serious charge, "Do we have evidence to establish this charge?" If the answer is negative, move down to the next most serious charges. Similarly, if one starts with the least serious charge, ask the question. "Is it simply this only or something more serious?" If the answer is in the affirmative, move upward to the more serious charge. Through this process of elimination, one may arrive at the appropriate charge.

15. How to make Annexure III and IV?

For filling up Annexures III and IV, go through Annexure – II (Statement of imputations of misconduct or misbehavior). At each step ask the question, "Is it required to be proved?" If the answer is yes, ask the question "Where is the evidence in support of this?" The evidence might be a part of the preliminary investigation document. If so, the same must be incorporated in the relevant Annexure. Else, efforts must be made to collect it and include in the Annexure.

After completion of Annexure – III, each item therein must be considered from the angle as to how the document is to be introduced, if the same is disputed by the charged official. Oral witnesses who could introduce the documents should be added in Annexure – IV in addition to those who were already included for establishing facts.

[What is a disputed document and how to handle such situation are dealt with in the chapter Conduct of Inquiry]

16. What are the precautions to be undertaken while preparing Charge Sheet?

While preparing the charge sheet, it must be ensured that only those documents are referred to and relied upon therein, so that all the listed documents could be made available. Further the availability of all the listed documents must be ensured. In this connection, it is relevant that the Hon'ble Supreme Court had observed in State of Uttar Pradesh & ORS. Vs Saroj Kumar Sinha [(2010) 2 SCC 772] dismissed the appeal by the State holding as under:

> *" 36. The proposition of law that a government employee facing a department enquiry is entitled to all the relevant statement, documents and other materials to enable him to have a reasonable opportunity to defend himself in the department enquiry against the charges is too well established to need any further reiteration."*
>
> *XXX*
>
> *39. Taking into consideration the facts and circumstances of this case we have no hesitation in coming to the conclusion that the respondent had been denied a reasonable opportunity to defend himself the inquiry. We, therefore, have no reason to interfere with the judgment of the High Court."*

Another important precaution to be undertaken before finalization of charge sheet is that one must go through it carefully following the "*Devil's Advocate approach*" i.e. purely with the idea of finding faults in the charge sheet. The faults may range from simple clerical inaccuracies, through logical fallacies to utter absurdities. One basic question of prime concern at this stage is: How the charged officer will exploit this? Needless to add, any fault noticed must be rectified.

17. What is a vague charge?

Any charge which is deficient in the details relating to the misconduct may be described as a vague charge. Such a charge shall have the effect of vitiating the proceedings. Dismissing the appeal with cost, the Hon'ble Supreme Court had held as under in State of Uttar Pradesh vs. Mohd. Sherif, 1982(2) SLR SC 265: AIR 1982 SC 937:

> "*3. After hearing counsel appearing for the State, we are satisfied that both the appeal Court and the High Court were right in holding that the plaintiff had no reasonable opportunity of defending himself against the charges levelled against him and he was prejudiced in the mattes of his defence. Only two aspects need be mentioned in this connection. Admittedly, in the charge-sheet that was framed and served upon the plaintiff no particulars with regard to the date and time of his alleged misconduct of having entered Government Forest situated in P.C. Thatia District Farrukhabad and hunting a bull in that forest and thereby having injured the feeling of one community by taking advantage of his service and rank, were not mentioned. Not only were these particulars with regard to date and time of the incident not given but even the location of the incident in the vast forest was not indicated with sufficient particularity. In the absence of these plaintiffs was obviously prejudiced in the matter of his defence at the inquiry. Secondly, it was not disputed before us that a preliminary inquiry had preceded the disciplinary inquiry and during the preliminary inquiry statements of witnesses were recorded but copies of these statements were not furnished to him at the time of the disciplinary inquiry. Even the request of the plaintiff to inspect the file pertaining to preliminary inquiry was also rejected. In the face of these facts which are not disputed it seems to us very clear that both the first appeal Court and the High Court were right in coming to the conclusion that the plaintiff was denied reasonable-opportunity to defend himself at the disciplinary inquiry; it cannot be gainsaid that in the absence of necessary particulars and statements of witnesses he was prejudiced in the matter of his defence.*

In the recent case of Anil Gilurker Vs. Bilaspur Raipur Kshetria Gramin Bank and Anr. [JT2011(10)SC373] Decided On: 15.09.2011 the Hon'ble Supreme Court observed as under:

> *7. A plain reading of the charges and the statement of imputations reproduced above would show that only vague allegations were made against the Appellant that he had sanctioned loans to a large number of brick manufacturing units by committing irregularities, but did not disburse the entire loan amount to the borrowers and while a portion of the loan amount was deposited in the account of the borrowers, the balance was misappropriated by him and others. The details of the loan accounts or the names of the borrowers have not been mentioned in the charges. The amounts of loan which were sanctioned and the amounts which were actually disbursed to the borrowers and the amounts alleged to have been misappropriated by the Appellant have not been mentioned.*

18. Is it necessary to quote the rules in all the articles of charge?

Not necessarily; where a definite rule has been flouted, it may be quoted without fail. If however, the employee is proceeded against for a behavior contrary to accepted practice and procedure the same may be construed as violation of Rule 3 of the Conduct rules and mentioned accordingly.

19. Can an officer be charge sheeted in respect of the action performed by him in his quasi-judicial capacity?

One of the issues for determination before the Central Administrative Tribunal (Principal Bench) in Ashish Abrol, Joint Commissioner of Income Tax Vs. Union of India (UOI) through The Secretary, Ministry of Finance, Department of Revenue and Director General of Income Tax (Vigilance) [MANU/CA/0171/2010] was as under:

> *(ii) Whether action could have been initiated against the Applicant while passing an order of assessment in quasi-judicial proceedings?*

In its decision dated 23.4.2010, the Principal Bench referred to a number of decisions of the Hon'ble Supreme Court and the High Court of Delhi including that of Union of India and Ors v. K.K. Dhawan MANU/SC/0232/1993: 1993 (2) SCC 56, wherein the Supreme Court held that when an officer in exercise of judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person, he is not acting as a Judge. There is a great reason and justice for holding in such cases that the disciplinary action could be taken. It is one of the cardinal principles of administration of justice that it must be free from bias of any kind. The above judgment also provides the non-exhaustive list of the circumstances wherein disciplinary action can be taken against the erring official:

> *Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion of duty;*
>
> *If there is prima facie material to show recklessness or misconduct in the discharge of his duty;*
>
> *If he has acted in a manner which is unbecoming of a Government servant;*
>
> *If he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;*
>
> *If he had acted in order to unduly favour a party;*
>
> *If he had been actuated by corrupt motive, however small the bribe may be.*

20. What is the time limit for issue of charge sheet?

Time limit prescribed for issue of charge sheet as prescribed by the Vigilance Manual (Ed 2005) is one month from the date of receipt of CVC's advice and two months from the date of receipt of investigation report.

21. Is there any time limit between the occurrence of the misconduct and the issue of charge sheet?

There is no time limit between the commission of misconduct and the issue of charge sheet in respect of serving employees. [The time limit in this respect regarding the retired employees is dealt with in the relevant chapter later]. However, Unexplained in-ordinate delays may have the effect of vitiating the inquiry. Hon'ble Supreme Court struck down the proceedings, in the case of P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board [JT2005(7)SC417, [2005]Supp(2) SCR474, 2006(1)SLJ67] relating to the issue of a Charge Sheet in 2000 in respect of the alleged misconduct committed in 1990,

> *"16. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.*
>
> *17. We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefits shall be disbursed within three months from this date. No costs."*

22. What is the effect of delay on the validity of the proceedings?

Delay may be of two types – delay in issue of charge sheet and secondly, delay in the conduct of proceedings. Hon'ble Central Administrative Tribunal (Principal Bench) in its decision dated 23.4.2010, in Ashish Abrol, Joint Commissioner of Income Tax Vs. Union of India (UOI) through The Secretary, Ministry of Finance, Department of Revenue and Director General of Income Tax (Vigilance) [MANU/CA/0171/2010] analysed a number of decisions on the subject and clarified the position in the following paragraph:

16. The sum and substance of the judgments is that:

the competent authority should be able to give an explanation for the inordinate delay in issuing the Memorandum of Charge;

the charges should be of such serious nature, the investigation of which would take a long time and would have to be pursued secretly;

the nature of charges would be such as to take a long time to detect such as embezzlement and fabrication of false records;

if the alleged misconduct is grave and a large number of documents and statement of witnesses had to be looked into, delay can be considered to be valid;

the Court has to consider the nature of charge, its complexity and on what account the delay has occurred;

how long a delay is too long always depends on the facts of the given case;

if the delay is likely to cause prejudice to the Charged Officer in defending himself, the enquiry has to be interdicted; and

the Court should weigh the factors appearing for and against the disciplinary proceedings and take a decision on the totality of circumstances. In other words, the Court has to indulge in the process of balancing.

23. How the charge sheet is to be issued?

As seen above, issue of charge sheet is the discharge of the constitutional obligation – to inform the employee of the charges. The charge sheet therefore needs to be served on the employee. It may either be served in person or sent to the supervisory officer of the employee concerned for service or sent by registered post.

Hon'ble Supreme Court in Delhi Development Authority vs H.C. Khurana [1993 AIR 1488, 1993 SCR (2)1033] has interpreted the term '*issue of charge sheet'* in the following manner in the context of the applicability of the sealed cover procedure: :

"The issue of a chargesheet, therefore, means its despatch to the government servant, and this act is complete the moment steps are taken for the purpose, by framing the chargesheet and despatching it to the government servant, the further fact of its actual service on the government servant not being a necessary part of its requirement. This is the sense in which the word 'issue' was used in the expression 'chargesheet has already been issued to the employee', in para 17 of the decision in Jankiraman."

However, in the case of Union of India Vs. Dinanath Shataram Karekar & Ors, [1998 SCC (L&S) 1837], the Hon'ble Supreme Court vide its judgment dated 30/07/1998

had held that charge sheet dispatched by registered post and received back with the postal endorsement "not found" does not amount to issue of charge sheet and set aside the order dated 19 Aug 1985 holding, .

> *"It has already been found that neither the charge-sheet nor the show-cause notices were ever served upon the original respondent, Dinanath Shantaram Karekar. Consequently, the entire proceedings were vitiated."*

24. Can the charge sheet be amended in the course of Inquiry?

Yes.

25. What precaution is to be taken consequent to the amendment to the charge sheet?

In the case of M.G. Aggarwal Vs. Municipal Corporation Of Delhi decided on 10 July, 1987 [32 (1987) DLT 394] it was held as under:

> *(7) It is obvious that the effect of the corrigendum would be to make out a new charge against the petitioner. However, the earlier enquiry was not terminated and new enquiry was not commenced against the petitioner. The corrigendum substantially altered the charge against the petitioner. No new enquiry was held. Mr. S.P. Jain witness was re-called in the continued enquiry on 3/04/1986, and he further gave evidence which supported the corrigendum. The enquiry ultimately resulted in the aforesaid order of dismissal dated 24/07/1986. which was confirmed by an order dated 18/11/1986. The result of this enquiry cannot obviously be sustained. When the charge has been substantially altered, it has to be tried de novo. The enquiry held and continued on the basis of the charge-sheet dated 31/01/1985and continued by incorporating the distinct charge, the subject-matter of The corrigendum dated 4/03/1986, is no enquiry at all as the petitioner has been denied an opportunity to meet the amended charge, as amended by The corrigendum. He has not been permitted to file reply to the amended charge. This being the case, the petitioner not having been given the opportunity to defend himself, the entire enquiry proceedings are bad in law, and the order of termination dated 24/07/1986 as well as the appellate order dated 1 8/11/1986 have to be quashed.*

26. How to issue the charge sheet, if the delinquent employee is not traceable and the charge sheet issued through registered post is returned by postal authorities with the endorsement '*not found*"?

When the delinquent employee is unauthorizedly absent and could not be contacted, copies of the charge sheet may be dispatched to all the known addresses of the delinquent official, available with the organization. If it fails, charge sheet or the gist thereof may be published in the local news paper; the charge sheet may be published in the web site of the organization and pasted in the notice board of the organization.

CHAPTER – 13

APPOINTMENT OF INQUIRING AUTHORITY AND PRESENTING OFFICER

1. Who appoints Inquiring Authority and Presenting Officer (PO)?

IO and PO are appointed by the Disciplinary Authority under rule 14(2) and 14(5) (c) of the CCA Rules respectively.

[Although the terminology used in the CCA (CCA) Rules 1965 is *"Inquiring Authority"* in common parlance, the authority is always referred to as Inquiry Officer or IO. Accordingly, in this handbook the said authority is referred to as IO.]

2. Is it always necessary to appoint an IO and PO?

An alternative to appointment of IO is the disciplinary authority itself performing the duties assigned to IO in the rules. However, there is no such alternative for the PO.

There may be certain organizations falling outside the purview of CCA Rules where there is no scheme for appointment of PO. Even in respect of such organizations also, the CVC has made the following recommendations in para 24.2 of Chapter X of the 1991 edition of its Manual:

> As the appointment of a Presenting Officer would help in the satisfactory conduct of departmental inquiry, the Central Vigilance Commission has advised that even in cases where the disciplinary rules do not contain a specific provision for the appointment of a Presenting Officers, the disciplinary authorities may consider appointing a Presenting Officer for presenting the case before the Inquiring Authority

3. Other than the above, is there any exception to the appointment of IO?

Proviso to rule 14 (2) of the CCA Rules provides that in respect of the cases pertaining to sexual harassment, the complaints committee constituted in the Ministry or Department shall be deemed to be the Inquiry Authority appointed by the Disciplinary Authority for the purpose of Rule 14 of the CCA Rules.

The said proviso, inserted through a notification dated 1 July 2004, also provides that the above stated complaints committee shall hold its inquiry as far as practicable in accordance with the provisions of Rule 14, unless a separate procedure has been prescribed.

4. Who can be appointed as IO?

The rules do not prescribe any qualification for appointment as IO. However, principles of natural justice require that the person appointed as IO has no bias and had no occasion to express an opinion in the earlier stages of the case. Besides, there are a number of Government Instructions on the subject such as the following:

S.No	Reference No.	Date	Gist
(a)	DP&AR OM NO. 35014/1/76-Estt.(A)	29 Jul 1976	Unless unavoidable Disciplinary Authority should refrain from being IO.
(b)	MHA OM No. F. 6/26/60-Ests. (A)	16 Feb 1961	Although there is no bar to appoint the immediate superior of the CO as IO, as a rule, the person who is appointed as IO should not be suspected of any bias in such cases.
(c)	Dept of Per O.M. No. 7/12/70-Ests.(A)	6 Jan 1971	IO should be senior in rank to the officer inquired against
(d)	O.M. No. 42/20/2008-AVD I.	27 Jul 2009	Terms and conditions for appointment of retired officers as IO

5. Whether the appointment of a retired officer is legally sustainable?

There remained some confusion for some time as to whether the retired officer can be appointed as a Inquiring Authority. The issue has since been set at rest by the Hon'ble Supreme Court vide its judgment in Civil Appeal No. 6743 of 2010 in Union of India & Ors. Vs P.C. Ramakrishnayya -

> 12. It is, thus, to be seen that the only difference between rule 14 (2) of CCS (CCA) Rules and rule 9 (3) of Railway Servants (Discipline and Appeal) Rules is that in the former the words "***a Board of Inquiry or"*** are not there. But that is of no significance for the issue in hand.
>
> 13. In *Alok Kumar* this Court considered in great detail, the meaning of the word "authority" occurring in Rule 9(3) and came to find and hold that a retired officer could also be vested with the delegated authority of the Disciplinary Authority (see paragraphs 26-62) to hold the inquiry. It may also be noted that in *Alok Kumar*, this Court also considered the decision in *Ravi Malik vs. National Film Development Corporation Ltd.* (2004) 13 SCC 427 and distinguished it by pointing out that it was in the context of Rule 23 (b) of the Service Rules and Regulations, 1982 of the National Film Development Corporation. In paragraph 45 of the judgment, the Court observed as follows:
>
> "45. Reliance placed by the respondents upon the judgment of this Court in *Ravi Malik* is hardly of any assistance to them. Firstly, the facts and the rules falling for consideration before this Court in that case were entirely different. Secondly, the Court was concerned with the expression "public servant" appearing in Rule 23(b) of the Service Rules and Regulations, 1982 of the National Film Development Corporation. The Court expressed the view that

"public servant" should be understood in its common parlance and a retired officer would not fall within the meaning of "public servant", as by virtue of his retirement he loses the characteristics of being a public servant. That is not the expression with which we are concerned in the present case. Rule 9(2) as well as Section 3 of the Act have used a very different expression i.e. "other authority" and "person/persons". In other words, the absence of the words "public servant" of the Government are conspicuous by their very absence. Thus, both these expressions, even as per the dictum of the Court should be interpreted as understood in the common parlance."

14. In the light of the discussions made above, we are satisfied that the judgments of the Tribunal and the High Court are contrary to the correct legal position and therefore cannot be sustained. We, therefore, set aside the judgment of the Tribunal and the High Court and dismiss the respondent's OA no.531 of 2004 filed before the Tribunal. The appeal is allowed.

15. There will be no order as to costs.

6. Who can be appointed as PO?

Rule 14(5) (C) provides that either a Government servant or a Legal Practioner may be appointed as Presenting Officer. Thus the choice is limited to either one of the two explicitly stated categories.

Para 24.1 of Chapter X of the Vigilance Manual (1991 Ed) provides that *An officer who made the preliminary investigation or inquiry into the case should not be appointed as Presenting Officer*.

[The Group of Ministers which considered the recommendations in the Hota Committee Report has made the following recommendations in this regard:

"10. After comprehensive discussions, the GoM decided that the Departments/Ministries should primarily use serving officers as IOs & POs and in important cases, they may request CVC to appoint their CDI as IO. The CVC may also maintain a panel of IOs/POs from amongst retired officers after due process of screening and empanelment. These officers could also be engaged on advice of the CVC. The remuneration etc. for these IOs and POs may be fixed, keeping in mind the recommendations of the Hota Committee."

Formal instructions in this matter are yet to be issued at the time of publication of this handbook]

7. When are the IO and PO appointed?

IO and PO are to be appointed if there is a need to inquire into the charges. The need will emerge only when the Charged Officer denies the charges or does not respond to the charge sheet. Thus the appointment of IO PO will arise only after the

charge sheet is issued and the charged officer either does not respond to it or denies the charge without convincing the Disciplinary Authority.

8. What is the remuneration payable to the IO and PO?

Honorarium, Transport Allowance and Secretarial Assistance charges have been laid down vide DoPT OM No. No.142/15/2010-AVD-I dated 31° July, 2012 subject to certain conditions

CHAPTER – 14

FUNCTIONS OF INQUIRY OFFICER

1. What is the basic responsibility of the Inquiry Officer?

As stated in Rule 14(2) the basic purpose of appointment of Inquiry Officer is to inquire into the truth of the imputations of misconduct or misbehavior against a Government Servant. .

2. What are the various activities performed by the Inquiry Officer for the discharge of the above function?

Various activities to be performed by the Inquiry Officer may broadly be classified as under:

a) Pre hearing stage
b) Preliminary hearing stage
c) Regular hearing stage
d) Post hearing stage
e) At any stage during the Inquiry
f) Tackling some unusual circumstances which may arise

The details of the activities are explained under different questions in separate paragraphs hereunder

3. What are the activities to be performed by the IO during the pre-hearing stage?

a) Verifying the appointment order and the enclosed documents
b) Acknowledging the appointment.
c) Preparation of the Daily Order Sheet – This will be done throughout the Inquiry
d) Analysing and understanding the Charges
e) Fixing the date for Preliminary Hearing
f) Sending communication to the parties about hearing.
g) Informing the controlling officers of Charged Officer and Presenting Officer
h) Ascertaining as to whether the Charged Officer has finalised a Defence Assistant and if so informing the Controlling Officer of the Defence Assistant

4. What is the scope of verification of appointment order and the enclosed documents?

It is desirable that the IO scrutinizes the order appointing him as IO and the enclosed documents thoroughly. Firstly, the appointment of Inquiry Officer is required to be made by the Disciplinary Authority and no one else. When the President is the Disciplinary Authority, the order of appointment of the I O may be signed by any authority that is competent to sign communications on behalf of the President. At any rate the Order should indicate that the appointment of IO is being made by the President only. Any deviation in this regard will constitute an incurable defect in the Inquiry. The complete proceedings will be liable to be quashed if the IO had been appointed by someone other than the Disciplinary Authority.

Similarly, there may be situation wherein the charged officer, while denying the charges, might have quoted a reference number different from the one mentioned in the charge sheet. It is desirable to resolve such discrepancies at the initial stage before it becomes too late.

5. What is the position of the cases where the President is the Appointing Authority?

Under the Transaction of Business Rules, the cases are required to be approved by the Minister concerned. Clarifications were issued through Govt. of India MHA Memo No. F. 39/1/69/-Ests(A) dated 16 April 1969 that the case need not be put up to the Minister every time an order is to be issued in the name of the President. As per the above OM, once the Minister has approved initiation of disciplinary proceedings, there is no need to show the file to the Minister while issuing orders under Rule 14(2),14(4),14(5), etc. The OM however, mandated that formal orders of the Minister should be obtained at the stage of show cause notice under Rule 15 (4)(i)(b) and at the stage of issuing final orders under Rule 15 (4)(iii).

In this context it is significant to note that the Hon'ble Supreme Court in its decision dated 05 Sep 2013 in Civil Appeal No. 7761/2013 [Union of India & Ors Vs B V Gopinath] has set aside the proceedings wherein the Charge sheet was not approved by the Minister. It is for consideration as to

> *46. Ms. Indira Jaising also submitted that the purpose behind Article 311, Rule 14 and also the Office Order of 2005 is to ensure that only an authority that is not subordinate to the appointing authority takes disciplinary action and that rules of natural justice are complied with. According to the learned Addl. Solicitor General, the respondent is not claiming that rules of natural justice have been violated as the charge memo was not approved by the disciplinary authority. Therefore, according to the Addl. Solicitor General, the CAT as well as the High Court erred in quashing the charge sheet as no prejudice has been caused to the respondent. In our opinion, the submission of the learned Addl. Solicitor General is not factually correct. The primary submission of the respondent was that the charge sheet not having been issued by the disciplinary authority is without authority of law and, therefore, non est in the eye of law. This plea of the respondent has been accepted by the CAT as*

also by the High Court. The action has been taken against the respondent in Rule 14(3) of the CCS(CCA) Rules which enjoins the disciplinary authority to draw up or cause to be drawn up the substance of imputation of misconduct or misbehaviour into definite and distinct articles of charges. The term "cause to be drawn up" does not mean that the definite and distinct articles of charges once drawn up do not have to be approved by the disciplinary authority. The term "cause to be drawn up" merely refers to a delegation by the disciplinary authority to a subordinate authority to perform the task of drawing up substance of proposed "definite and distinct articles of charge sheet". These proposed articles of charge would only be finalized upon approval by the disciplinary authority.

6. Can the IO take initiative for removing the deficiencies in the Charge Sheet?

IO has full liberty to bring to the notice of the Disciplinary authority any discrepancy which is of the nature of clerical or typographic mistake, i.e. patent errors which are apparent in the face of the record. In case there is any patent defect in the Charge Sheet, the I-O may bring it to the notice of the Disciplinary Authority well in time so that the defect can be cured.

In this context it is essential that IO should not take upon himself the role of refinement or reinforcement of the Charge Sheet. He should confine himself only to the patent errors in the Charge Sheet and not try to make qualitative improvement in it. Any initiative by the IO for the fortification of the charge sheet by way of including additional evidence is most likely to provide material for challenge on grounds of bias as the action of the IO is liable to be perceived as that of a prosecutor.

An illustrative list of patent errors is as under:

(a) Typographic mistakes

(b) Quoting wrong Rule Numbers. E.g.

(i) Charge sheet is being issued under Rule 15 of the CCS (CCA) Rules 1965

(ii) The acquisition of this immovable property was not reported to the competent authority as required under Rule 81 (2) of the CCS (Conduct) Rules 1964.

(c) Incompatibility between the name of the Rule and its year e.g. CCS(CCA) Rule 1955

(d) Incompatibility between the same figures mentioned in different parts of the Charge Sheet.

(e) Names of persons or places mis-spelt in the Charge Sheet e.g. "… acquired a house at Hidurrabad at a cost of Rs. 13,00,000/="

(f) Inconsistency between the numeric and verbal description of an amount e.g. " Rs. 7,348/= (Rupees Three Thousand seven Hundred and forty eight) "

(g) Wrong mention of the reference number and/or date of communication as well as Government instructions.

Illustrative list of errors which IO should not try to rectify is as under:

(a) Any logical inaccuracies
(b) Insufficiency of evidence
(c) Vagueness of charge
(d) Ambiguity in charge
(e) Lack of coherence between the misconduct and the charge. E.g. Unauthorised absence is shown as lack of absolute integrity, while it would have been better described as lack of devotion to duty.

7. Is it necessary for the IO to acknowledge the appointment order?

It is a good practice for the IO to acknowledge his appointment. This will keep the Disciplinary Authority informed that the IO has taken charge of the matters and is proceeding with the task. In case the IO is not able to take up the appointment, on account of any valid reason, it is all the more important that the Disciplinary Authority is informed well in time. While a person is not expected to turn down the appointment as IO due to personal reasons, there may be circumstances wherein the IO may have to decline to act so in the interest of the case or due to organisational reasons. Such occasions should be extremely rare. But when such circumstances arise, the IO should inform the Disciplinary Authority without any delay with complete reasons

8. What is Daily Order Sheet (DOS)?

Daily Order Sheet is the record of the progress of the case handled by the IO during a day. It is prepared and maintained by the IO. While no definite format has been prescribed for the purpose, it is desirable to indicate the following in the Daily Order Sheet.

(a) Serial No of the order

(b) Date

(c) Parties present

(d) What happened [eg.: State Witness No. 3 and 4 examined, cross examined and re-examined. At the conclusion of hearing, Charged Officer intimated that he may not be able to attend hearing for two weeks because he had received message from his native place stating that his mother is not well. He accordingly requested that the next

hearing may be held after two weeks. Request has been agreed to. Date of Next Hearing will be intimated to the parties after two weeks]

(e) Signature of the parties concerned

9. What is the importance of DOS?

It needs to be appreciated that Daily Order Sheet will be the most authentic record for ascertaining as to what happened in the course of inquiry because it is signed by all present.

Inquiring Authority should therefore pay adequate care to the accurate recording of DOS. All the opportunities granted to the PO needs to be recorded without fail because these will help in countering the allegation, if any, of inadequate opportunity raised by the Charged Officer at the later stage.

10. Are copies of the DOS supplied to all the parties concerned?

Copy of DOS must be given to the parties present and signing it. While conducting ex-parte proceedings, it would be a good practice to dispatch the copies of the DOS to the delinquent official. This action will manifest the bonafide of the authorities, in case the delinquent official alleges denial of reasonable opportunity, bias, malafide, etc.

11. When is the Daily Order sheet to be prepared?

Daily Order Sheets are to be prepared whenever there is a progress in the case – not only when hearing takes place. Thus the first Daily order sheet may be made on the day when IO received his/her appointment order. It may read as under:

Daily Order Sheet No. 1

Dated 99. Aaa.9999
Parties present: None

Received Order No. ….. dated ….. from ….. appointing me as the Inquiry Authority to look into charges framed against ….. vide Memorandum No. …… dated ……

The following papers were also received along with the Charge Sheet:

(a) Copy of the charge sheet
(b) Copy of the written statement of defence
(c) Copy of order No. …. dated …. appointing Shri …. as Presenting Officer in the case.

An acknowledgement was sent to the Disciplinary Authority.

Sd/-
Name
Designation

12. How does the IO analyse and understand the charge?

IO has to perceive the charge sheet based on the Charge – Fact – Evidence co-relation. This will help in analyzing and appreciating evidence.

This will help the IO to proceed with the task with clarity right from the initial stage

13. What are the precautions to be taken by the IO during the pre-hearing stage?

The date for the preliminary hearing must be chosen in such a way as to provide reasonable opportunity to the parties concerned. For example if the parties are posted outstation, date of hearing must be fixed so that there is adequate time for the communication to reach the parties and adequate time for the parties for undertaking the travel and reaching the venue.

14. What is preliminary hearing stage?

The phase of the hearing from the first appearance of the parties before the IO till the stage of recording of evidence is known as preliminary hearing.

15. Under what circumstances, the IO may stay the proceedings?

IO cannot stay the proceedings except under one of the under mentioned two circumstances:

(a) When there is a stay order from the court of competent jurisdiction
(b) When the Charged Officer has expressed lack of faith in the IO

16. What course of action is open to the IO when the Charged Officer presents an order from the Court staying the proceedings?

Under the above stated situation, the Disciplinary Authority must be promptly informed of the development, to enable the Disciplinary Authority to seek legal advice regarding scope of the order and to explore the possibility of filing appeal against the stay order. IO should not proceed with the inquiry unless the stay order is vacated by the court or the Disciplinary Authority informs, based on legal advice that the stay order does not apply to the case in question.

17. What course of action is open to the IO when the CO expresses lack of confidence on the IO?

As stated above, the IO shall stay the proceedings forthwith and inform the CO that he is at liberty to seek a change of IO as per Rules. IO should also inform the CO that the proceedings cannot be stayed indefinitely to facilitate the CO making

application for change of IO and that the CO must submit the application within a prescribed time (say one week) and submit proof thereof; else the IO is at liberty to proceed with the inquiry.

Simultaneously, the IO should apprise the Disciplinary Authority about the development and await further instructions.

18. What are the functions of the IO during the Preliminary Hearing stage?

During Preliminary Hearing, IO is required to perform the following actions:

(a) Making arrangements for conducting the hearing
(b) Setting the stage for smooth conduct of hearing
(c) Asking the statutory questions
(d) Finalisation of the question of Defence Assistant
(e) Fixing dates for Inspection of the originals of the documents
(f) Fixing dates for the submission of the list of additional documents and witnesses required by the CO for the purpose of his defence
(g) Finalisation of the documents and witnesses admissible for defence
(h) Taking action for procuring the additional documents required for the defence.
(i) Settling the issue of disputed documents
(j) Taking the documents on record
(k) Issue of certificates of attendance to the parties. This will be done during regular hearing stage also.
(l) Deciding on the requests for adjournment

19. What arrangements are to be made for conducting hearing?

Even before the arrival of the parties, the IO should ensure necessary seating arrangements for conducting hearing. Preferably, the seating arrangement should be such that both the parties will have equal access to the IO and the IO can watch and hear both the parties comfortably. At any rate, the seating arrangements should not be such as to send any signal that IO is inclined in favour of either of the parties. Besides, it is desirable that no one other than those who are required for the hearing is present in the room while the hearing is in progress. This may not always be possible and it depends upon the space provided to the IO by the organisation. However, IO should apply his mind to this aspect. Making a stenographer and a computer available for the recording the proceedings is another aspect to be attended to by the IO.

[Details regarding the remaining activities of the IO are discussed in the chapter on Conduct of Inquiry]

20. What are the activities to be performed by the IO during the regular hearing stage?

During regular hearing stage, IO will continue to prepare and issue Daily Order Sheets and certificate of attendance as was being done earlier. In addition, IO will be performing the following activities:

a) Summoning witnesses
b) Monitoring the conduct of the examination of witnesses
c) Recording the statements of the witnesses
d) Recording the demeanor of the witnesses
e) Deciding objections about the questions raised during examination of witnesses.
f) Deciding requests for introducing additional witnesses.
g) Deciding requests for recalling witnesses
h) Asking the CO to state his defence on conclusion of the case of the Disciplinary Authority.
i) Putting the mandatory questions on conclusion of the case of the defence
j) Checking up from the CO as to whether he got sufficient opportunity for his defence.
k) Giving directions for the submission of the written briefs by the Presenting Officer and the CO.

21. Does the IO have power to enforce attendance of witnesses?

IO does not have power to enforce attendance of witnesses, except when an ad hoc notification in respect of the particular inquiry has been issued by the Central Government authorizing the Inquiring Authority to exercise powers specified in Section 5 of Departmental Enquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act 1972.

22. What is to be done, if a listed witness does not turn up for inquiry?

In case a Government official who has been named as a witness in a departmental proceeding fails to turn up, the matter may be reported to the higher authorities of the witnesses. Para 91 of P&T Manual provides that refusal to appear as witnesses can be construed as sufficient cause for initiating disciplinary proceedings against him.

[Details regarding the remaining activities of the IO are discussed in the chapter on Conduct of Inquiry]

23. What are the post hearing activities to be performed by the IO?

During the last hearing, the IO will fix time limit for the PO and the CO to submit their respective written briefs.

Thereafter, the IO prepares his report and submits the same to the Disciplinary Authority together with the records of the case.

24. What is the time frame within which the Inquiry is to be completed by the IO?

As per the Vigilance Manual (Ed 2005) Inquiry Report is to be submitted by the IO within six months from the date of appointment.

CHAPTER – 15

ROLE AND FUNCTIONS OF THE PRESENTING OFFICER

1. What is the basic responsibility of the Presenting Officer (PO)?

Presenting Officer is appointed for the purpose of presenting the case of the Disciplinary Authority so that the charges can be proved in the Inquiry. In many ways, the role of the presenting Officer is a challenging one. His role is comparable to that of the anchor runner in a relay race. Many people have carried the baton and finally it has been handed over to him. Whatever be the merits and demerits of the earlier functionaries, being the last person in the line, it is for the Presenting Officer to carry the baton to the winning post. An intelligent Presenting Officer can make up for the mistakes committed by the earlier functionaries and accomplish the target. Similarly, a bad Presenting officer may lose the advantage acquired by the Investigating officer, Vigilance Officer, etc. and may lose the case through bad presentation.

2. What are the various activities performed by the PO for the discharge of the above function?

For achieving his objective, the Presenting Officer is required to perform several functions. Basically, the Presenting Officer is required to lead the evidence of the Disciplinary Authority and satisfactorily answer the contentions raised by the Charged Officer. Thus, the explicit functions of the Presenting Officer are:

a. Presenting the documentary evidence
b. Leading the oral evidence on behalf of the disciplinary authority
c. Cross examining the defence witness
d. Preparation and presentation of the written brief

Successful accomplishment of these explicit functions, call for a number of implicit functions as well. Some of the actions such as liaison with the Disciplinary Authority has to be performed by the Presenting Officer throughout the course of his assignment. Notwithstanding this, various actions to be taken by the Presenting Officer in the course of his assignment can be conveniently categorised into the following four phases. :

- Preparatory stage
- Preliminary Hearing stage
- Regular Hearing stage
- Post hearing stage

3. What are the activities performed by the PO during the preparatory stage?

Following are the activities performed by the Presenting Officer during the preparatory stage:

Examine Appointment order and the documents received along with it:

a) Establishing rapport with the Inquiry Officer
b) Understanding the charge
c) Analysing the charge
d) Link the facts to evidence
e) Anticipate possible line of defence: At the preparatory stage, the Presenting Officer should also anticipate the line of defence, the Charged Officer will be taking.
f) Visualise the transaction

4. What documents are to be received by the PO along with the appointment order?

a) PO receives the following documents along with the Appointment Order:

b) Charge Sheet along with the enclosures.

c) Written Statement of defence submitted by the charged officer.

d) In case the Charged Officer has not filed any Statement of Defence, a confirmation to the above effect and a confirmation to the effect that the Charge Sheet has been served on the Charged Officer.

e) A copy of the order of appointment in respect of the Inquiry Officer.

5. Will it be fair and appropriate for the PO to meet the IO unless called for a hearing?

Presenting Officer is the agent of the Disciplinary Authority and his endeavour is to prove the charge. On the other hand the Inquiry Officer is an impartial authority who is required to decide the case on the basis of the evidence led before him. Notwithstanding this position, the Presenting Officer should consider himself as one assisting the Inquiry Officer in ascertaining the truth. Often it is said that the relationship between the Disciplinary Authority and the Presenting Officer is similar to that between the client and an advocate. Presenting Officer is compared to the Government Counsel. Every counsel is an officer of the court and owes a responsibility towards the court in helping the court to ascertain the truth. On the same analogy, the Presenting Officer should consider himself as an officer under the Inquiry Officer assisting the latter to ascertain the truth. Immediately on receipt of the appointment order, the Presenting Officer should get in touch with the Inquiry Officer

and assure him of his co-operation. It is also desirable that the Presenting Officer informs the Inquiry Officer of his address and phone number to facilitate easy communication.

Needless to add, it will be unethical for a PO to influence the IO regarding the hearing and its outcome.

6. What is the need for the PO to understand the charge immediately on receipt of the appointment order?

Presenting Officer can present the case effectively only if he understands the case of the Disciplinary Authority thoroughly. The first step in this regard calls for the understanding of the charge. Often the charge is that a person has done something which should not have been done or has failed to do something which should have been done. That someone has used abusive language, (which should not have been done) is a charge. That a person has failed to keep the cash book up to date, (failed to do something, which should have been done) can be a charge. While charges like unauthorised absence, insubordination, etc. can easily be understood, there may be situations wherein the omission or commission of the Charged Officer may not be easily understandable. The clue for understanding the charge is asking the following questions:

- What has the Charged Officer done or failed to do?
- What was required to be done or not to have been done?
- Which rule or instruction prescribes what is required to be done or not to be done?

7. How does the PO analyse the Charge?

The PO has to perceive the Charge – Fact – Evidence co-relation in the Charge Sheet. For example, if there is a charge that an officer (working in a stores department) has procured certain items without any demand for the same from the sub-depots and thereby violated certain departmental instructions, the charge involves the following facts:

- That there are some instructions relating to the manner of procurement of items.
- That the instructions require that the items can be procured only after the receipt of the demands from the sub-depots.
- That the officer purchased the specified items.
- That there was no demand from any sub-depot for these items.

8. How should the PO link evidence to charge?

Every fact that is required for establishing the charge must be presented through some evidence. Presenting Officer must locate evidence at his disposal for establishing various facts. This can be done by listing out the facts to be proved in the inquiry and examining which piece of evidence (in Annexure III and IV) will help in establishing the fact. The officer who has carried out the Preliminary Investigation can be of great help in this regard because he has already reached certain conclusions on the basis of the evidence gathered by him during the investigation stage.

9. What is the sphere of activities during the Preliminary Hearing Stage, with which PO is concerned?

- ✓ Collection of original documents
- ✓ Finalising the schedule for the Inspection of the listed documents
- ✓ Conducting the inspection of the listed documents
- ✓ Additional documents required by the Charged Officer
- ✓ Collection of the documents cited by the Charged Officer
- ✓ Handing over the listed documents to the Inquiry Officer after the inspection
- ✓ Obtaining the copies of the documents required by the Charged Officer

10. Wherefrom and when does the PO collect the original documents?

Originals of the documents listed in Annexure III of the charge sheet are generally held by the Disciplinary Authority. Normally they are retained by the Vigilance Section or the Administrative section which has processed the case for issue of Charge Sheet. The same will have to be obtained by the Presenting Officer and kept in safe custody till it is got inspected by the Charged Officer and finally presented to the Inquiry Officer. Depending upon the nature of the documents and convenience of the parties, these documents may be taken over by the Presenting Officer at an appropriate time. At any rate, the documents must be with the Presenting Officer before the inspection of the same by the Charged Officer. It is advisable for the Presenting Officer to critically examine the originals of the listed documents so that the disputes which the Charged Officer is likely to raise may be anticipated and proper remedial action can be planned.

11. When does the inspection of documents take place?

It is during the Preliminary Hearing, that a decision is taken for the Inspection of the Documents. As per Rule 14(II)(i), inspection of the documents is required to be done "within 5 days of the order or within such further time not exceeding five days as the Inquiring authority may allow".The Presenting Officer will have to indicate to the Inquiry Officer, his preference for the venue, date and time of the inspection of the listed documents. Depending upon the mutual convenience of the parties, the Inquiry Officer will fix the schedule for the inspection of the listed documents.

12. What precautions are to be observed by the PO during inspection of documents?

Inspection of listed documents by the Charged Officer is a sensitive event in the disciplinary proceedings. IO is at liberty to leave it to the PO and CO. Under such a situation, it is for the Presenting Officer to get the Inspection of listed documents completed. Presenting officer has to exercise great care and caution during the inspection of original documents by the Charged Officer. There have been occasions wherein the originals were destroyed during the inspection. At the same time, Inspection of originals is a valuable right of the Charged Officer and the same cannot be curtailed by unwarranted and unreasonable restrictions. The following suggestions are worth considering at the time of inspection of documents:

- The Charged Officer may not be allowed to hold a pen while carrying out the inspection of the originals. A small dot or bar or a comma or a colon may change the contents of the originals enormously. As Charged Officer is entitled to take notes at the time of inspection, he may be advised to take notes with a pencil.

- Preferably give one document at a time. There may be a number of documents which will be inspected by the Charged Officer. Simultaneously handing over all the documents to the Charged Officer will have many disadvantages. It is appropriate to give the documents one after another. Once a document has been inspected, the same must be taken back and then another document may be handed over for inspection. As the Charged Officer has been supplied with the copies of the documents, he may not require to compare the contents of the originals. However, if the Charged Officer requires to simultaneously peruse two documents, the same may be allowed ensuring the safety of the documents.

- Keep the document equidistant between the Charged Officer and the Presenting Officer. This will enable the Presenting Officer to have physical control of the original document if the charged officer tries to destroy.

- Never leave the documents in the custody of the Charged Officer. It is advisable that the Presenting Officer is always present in the room throughout the inspection. In case there is an extreme emergency, the Presenting Officer may temporarily suspend the inspection, keep the documents under lock and key and request the Charged Officer to wait for a few minutes. Alternatively, depending upon the nature of the document being inspected, some reliable person may be asked to take charge of the situation temporarily.

- The Charged Officer and the Defence Assistant must be treated with utmost courtesy, when they visit the Presenting Officer for the inspection of the documents. In case there is any difference of opinion about the rights of the Charged Officer or the limitations which the Presenting Officer may impose, the matter may be referred to the Inquiry Officer rather than entering into an unpleasant debate.

13. What is the role of the PO with regard to the Additional documents and witnesses demanded by the IO?

Charged Officer is entitled to ask for the documents which may be of help in his defence. In fact, the Inquiry Officer is required to ask for the details of the documents and witnesses required for the purpose of defence. Although it is for the Inquiry Officer to decide on the relevance of the documents and witnesses cited by the Charged Officer, Presenting Officer need not be a mute spectator at this stage. Being a party to the proceedings, he has a right to express his opinion. Besides, he also has a role to assist the Inquiry Officer by way of bringing to the notice of the latter the rule position and the custodian of the document which has been cited by the Charged Officer

14. What is the role of the PO in collecting the additional documents demanded by the CO?

Often, the Inquiry Officers request the Presenting Officer to collect the documents required by the Charged Officer for the purpose of his defence. This practice is likely to vitiate the inquiry and must be strictly avoided. The documents required by the Charged Officer must reach the Inquiry Officer direct from the custodian of the documents. Collection of the documents by the Presenting Officer may result in allegation being leveled by the Charge Officer that the documents were tampered while under the custody of the Presenting Officer. If the Inquiry Officer requests the Presenting Officer to collect these documents, the latter should politely apprise the former of the problems involved. However there can be no objection to the Presenting Officer transiting these documents in sealed covers from the custodian of the documents to the Inquiry Officer.

15. What is the role of the PO in handing over the listed documents to the IO?

After the Inspection of the documents by the Charged Officer, in the next hearing, the Presenting Officer is required to hand over the listed documents to the Inquiry Officer, who will be taking over the documents and marking them as SE-1, SE-2, etc. At this stage, the Presenting Officer should pay special attention to these aspects:

The facts regarding the admission and dispute over the listed documents should be correctly brought out in the Daily Order Sheet.

The documents taken over by the Inquiry Officer are to be signed by the Presenting Officer and the Charged Officer.

Presenting Officer should ensure that the details of the documents taken over are correctly reflected in the daily Order Sheet. This alone will serve as a receipt for the documents handed over by the Presenting Officer.

16. Is the PO entitled to have copies of the additional documents demanded by the CO?

As the Charged Officer is entitled for the copies of the listed documents, the Presenting Officer is also entitled for the copies of the documents relied upon by the Charged Officer. He is also entitled to peruse the originals of these documents. These documents will be collected by the Inquiry Officer and will not be under the custody of the Charged Officer. Hence, the Presenting Officer will have to request the Inquiry Officer for the copies of these documents and the perusal of the originals.

The PO has to carefully go through the documents cited by the Charged Officer and try to anticipate as to how the Charged Officer will draw support from the same. As the Charged Officer will submit his written brief only after the submission of brief by the Presenting Officer, there is no way for the Presenting Officer to understand as to how the Charged Officer relies upon the documents for the purpose of his defence. Presenting Officer can only anticipate this and accordingly do the needful in his written brief.

17. What are the responsibilities of the PO during the Regular Hearing Stage?

During Regular Hearing, witnesses of both sides are examined. As regards the examination of the witnesses of the Disciplinary Authority, PO has the following responsibilities:

- Deciding the witnesses who may be dropped. At times Annexure IV of the Charge Sheet may contain witnesses only for the purpose of introducing the disputed documents. In case the CO did not dispute the authenticity of the documents, it may not be necessary to call such witnesses. IO may accordingly be informed. This has to be done with the approval of the Disciplinary Authority.

- Deciding as to whether any additional witness is required. This also has to be done with the approval of the Disciplinary Authority. Thereafter a request will have to be made to the IO.

- Contacting and briefing the witnesses. There is nothing unethical in contacting the witnesses in advance and informing of the proposed hearing. If the pre-recorded statement of the witnesses is available, the same may be shown to the witness also. The witness may also be informed of the likely questions during cross examinations and be advised to be ready with answers.

- Needless to add that it would be highly unethical to request or persuade or pressurise the witness to depose in any particular manner

- Arranging the attendance of the above witnesses

- Conducting the examination of the witness: Normally, examination in chief may not be in the question answer form. If a pre-recorded statement is available, the same may be read over to the witness and he/she may be

asked to confirm the same. The witness may also be asked if he/she would like to add, subtract or modify the contents of the pre-recorded statement. Otherwise, the witnesses may be asked to introduce himself/herself and then state the facts relevant to the case. PO, however, is expected to be ready with the details which are to be stated by the Witness. In case any particular information was not covered by the witness in his/her narration of the events, PO should specifically ask for the same.

- Conducting re-examination of the witnesses where necessary: PO should carefully watch and note down the likely confusions created through the cross-examination. Appropriate questions must be put during re-examination, to clear the misconceptions created through cross-examination.

18. What are the responsibilities of PO during cross examination of Defence Witnesses?

The task of cross examining the defence witnesses involves the following activities:

- ❖ Gathering the background information about the defence witnesses.
- ❖ Anticipating the deposition of the defence witnesses.
- ❖ Observing the examination in chief of the defence witnesses so as to judge the veracity of the statements, involvement/interest of the witnesses and also to object to leading questions.
- ❖ Cross examining the defence witnesses

19. What precautions are required on the part of the PO during the Regular Hearing stage?

It is said that efficient examination-in-chief, comprises in asking questions in such a way that the witness understands what answer is required; efficient cross examination comprises in asking questions in such a way that the witness does not understand what answer is required. In addition to the general skill of questioning during examination of witnesses, the PO should take the following precautions:

a. Ensure that no leading questions are asked during examination in chief and re-examination of the State witnesses

b. Object to the Leading questions raised by the CO or the Defence Assistant during examination or re-examination of the defence witnesses

c. Raise objections, where necessary, during cross examination of State witnesses.

d. Ensure that recorded statement of witness is true to the depositions and free from errors.

20. What are the activities of the PO during post hearing stage?

After the hearing is over, PO is required to submit the written brief. The purpose of the brief is to establish, by relying on the evidence produced in the inquiry that the charge stands proved.

21. What is the format for the brief of the PO?

There is no prescribed format for the brief of the PO. The following format is suggested for the purpose:

a. Introduction
b. Details of the charges leveled
c. Proceedings during the Preliminary Hearing: How was inspection of documents conducted; how many documents were disputed by the CO; how many documents were taken on record by the IO and how many were to be introduced through oral evidence; what were the documents and witnesses demanded by the CO for the purpose of his/her defence.
d. Proceedings during the regular hearings; how many witnesses were led from each side; whether any new evidence was introduced during the hearing;
e. Opportunities given to the CO: appointment of Defence Assistant; adjournments demanded and granted; documents and oral witnesses demanded and allowed, etc.
f. Case of the Disciplinary Authority: the Charge-facts-evidence co-relation
g. Evidence on behalf of the Disciplinary Authority
h. Evidence on behalf of the CO
i. Analysis of the Evidence presented by the parties.
j. Conclusion

22. What will happen if the PO could not attend a hearing?

In this connection, para 9.2 of Chapter XI of the Vigilance Manual 1991 Ed provides as under:

9.2 Rule 14 (14) of CCA Rules provides that the witnesses may be examined by or on behalf of the Presenting Officer. Absence of PO on any particular hearing would not necessarily imply postponment of hearing if an authorized person is present on behalf of the Presenting Officer. The substituted officer need not be formally appointed as Presenting Officer.

23. What should be the form and frequency of interaction between the PO and the Disciplinary Authority?

The presenting officer presents the case on behalf of the Disciplinary Authority. Therefore, all the actions of the PO should have the approval of the Disciplinary

Authority. PO should regularly be apprising the Disciplinary Authority about the proceedings of each hearing. Para 2.4 of Chapter XI of Vigilance Manual 1991 Ed also provides as under

2.4 The disciplinary authorities should be kept posted with the progress of oral enquiries. The Presenting Officer should send brief reports of the work done at the end of each hearing to the disciplinary authority in the prescribed proforma

PO should seek permission of IO before dropping any evidence or seeking permission of IO for introduction of any new evidence,

CHAPTER – 16

DEFENCE ASSISTANT

1. Who can be appointed as Defence Assistant?

Rule 14(8) of the CCA Rules provides for appointment of any one of the following as a Defence Assistant, subject to certain conditions:

(a) A Government servant
(b) Legal practitioner
(c) Retired Government Servant

2. What are the conditions relating to appointment of a serving Government Servant as Defence Assistant?

Following are the conditions for appointment of serving Government Servant as Defence Assistant

(a) The Government servant concerned must be posted in any office at the Headquarters of the CO or in any office where the inquiry is being held

(b) The person so appointed must not have three pending cases:

3. Can a Government Servant under suspension be appointed as Defence Assistant?

DG P&T letter No. 201/`5/75-Disc.II dated 3 Jul 1975 provides that a Government Servant under suspension can also be allowed to function as Defence Assistant. The reasoning given in support of the above decision is that merely by being under suspension, one has not ceased to be a Government Servant. The above letter refers to a decision of the Kerala High Court, without giving the details of the judgment.

4. Can the CO seek the services as Defence Assistant, of a Government Servant posted in a station other than the place of inquiry as well as the Headquarters of the CO?

Proviso to Rule 14(8) provides for appointment as Defence Assistant, a Government Servant posted at any other station, if the IO, having regard to the circumstances of the case and for reasons to be recorded in writing, so permits.

It is necessary that in either case, whether allowing or rejecting the request of the CO, the order of the IO must be a reasoned order. There is a statutory condition that reasons must be recorded while granting permission to engage a Defence Assistant from out station. Principles of natural justice require that the order rejecting the

request of the CO in this regard must be through a speaking one because it affects the prospects of reasonable opportunity of defence.

5. What further course of action is available, if the IO rejects the request of the CO for appointment as Defence Assistant, of a Government Servant posted at a station other than the Headquarters of the CO or the place where the inquiry is being held?

The CO aggrieved by the order of the IO in the matter of engaging a Defence Assistant from outstation is at liberty to make an appeal to the Disciplinary Authority as provided in DoP&T OM No. 11012/3/86-Estt (A) dated 29 Apr 1986.

6. What are conditions under which a legal practitioner may be allowed to present the case on behalf of the CO?

Legal practitioner may be allowed to function as Defence Assistant under either of the two following conditions:

(a) Where the PO is a Legal Practitioner – under this condition, the CO has a statutory right to engage a legal practitioner as his defence assistant

or

(b) Where the Disciplinary Authority having regard to the circumstances of the case so permits

7. What are the circumstances which may justify the appointment of a legal practitioner as defence assistant?

A non-exhaustive list of factors to be considered while examining the request of the CO for engagement of legal practitioner has been provided in DG P&T letter No. 6/8/72-Disc. I dated 29 Aug 1972:

(a) Status of the PO
(b) His experience in this job
(c) Volume and nature of documentary evidence produced.

The above letter also states that the sole criterion by which the Disciplinary Authority must be guided is, whether the rejection of the request could be construed as denial of reasonable opportunity.

Subsequently, the MHA DP&AR vide its OM No. 11012/7/83-Estt.(A) dated 23 Jul 1984 has clarified that when on behalf of the Disciplinary Authority the case is being presented by the Prosecuting officer of the CBI or the Law officer (such as Legal Advisor, Junior Legal Advisor) the request deserves to be considered favourably

8. What are the restrictions on a Retired Government Servant being appointed as a Defence Assistant?

DoP&T OM No. 11012/11/2002-Estt.(A) dated 5 D}Feb 2003 provides the following conditions in the matter of appointment of a retired government as a Defence Assistant:

(a) Should have retired from Service under the Central Government.

(b) If the retired Government Servant happens to be a legal practitioner also, the conditions prescribed for engaging a legal practitioner as defence assistant will apply

(c) Should not have been associated with the case in any manner in his official capacity

(d) Cannot function as Defence Assistant in more than seven cases at any point of time.

9. When is the Defence Assistant appointed?

It is desirable that the IO informs the CO of the latter's entitlement for having the services of Defence Assistant in the first communication regarding the hearing. As soon as the CO informs the IO of the details of the Defence Assistant, the IO may write to the controlling officer of the Defence Assistant so that the latter could be spared for the first hearing it self.

Before formally allowing the person to function as Defence Assistant, O should check and satisfy himself/herself about the number of cases being handled by the defence assistant.

CHAPTER - 17

CONDUCT OF INQUIRY

1. What are the stages in conduct of inquiry?

Conduct of inquiry comprises the following main stages:

(a) Pre – hearing stage: From the appointment of IO PO till the commencement of hearing. During this stage, the IO and PO examine the documents received by them and ensure their correctness. Besides, the PO prepares for the presentation of the case.

(b) Preliminary Hearing Stage: From the time the parties start appearing before the IO, till the commencement of presentation of evidence. During this stage CO is asked once again as to whether the charges are admitted, inspection of documents take place, CO presents the list of documents and oral witnesses required for the purpose of defence

(c) Regular hearing stage: during this stage, evidence is produced by the parties.

(d) Post hearing stage: during this stage, the PO and the CO submit their written briefs to the IO and the IO submits his/her report to the Disciplinary Authority.

2. Is there any time limit for commencement of hearing?

As per rule 14(7) of the CCA Rules, first hearing of the case must be scheduled within 10 days of the IO receiving the Charge sheet. As the copy of the Charge Sheet is sent to the IO together with the appointment order, it is implied that the inquiry is to commence within 10 days of the IO receiving the appointment order. The above rule also provides the time limit prescribed is extendable by maximum of another 10 days.

3. What happens during the first hearing of the case?

As per Rule 14(9) of the CCA Rules, when the CO appears before the IO, the latter should ask whether the CO admits the charges or has any defence to make. If the CO pleads guilty in respect of any of the charges, the IO should get it recorded and get it signed by the CO. Rule 14(10) provides that the IO shall send a finding of guilt to the Disciplinary Authority in respect of the charges in respect of which the CO has pleaded guilty.

In addition to the above, the IO shall fix a schedule for the following:

(a) inspection of the documents listed in Annexure III of the Charge sheet, within five days extendable by a maximum of another five days [Rule 14(11)(i)]

(b) Submission of the list of witnesses to be examined on behalf of the CO [Rule 14(11)(ii)]

(c) Submission of the list of additional documents required by the CO. within ten days extendable by a maximum of another ten days. Rule 14(11)(iii)]

4. Is it advisable for the IO to ask the CO during the first hearing as to whether the CO has faith in the IO?

It is not a bad idea to ask the CO during the first hearing as to whether the CO has faith in the IO and record the answer to the question. This may be quoted against the CO, in case the CO raises any frivolous complaint of bias later. On the other hand, if the CO expresses lack of faith on the IO in the first instance, the same may be recorded and the CO may be advised of the option open to him/her for seeking change of IO.

5. Is it necessary for the IO and PO to be present during the inspection of listed documents by the CO?

Not necessarily. Para 3.7 of Chapter XI of the Vigilance Manual 1991 Ed provides that inspection of listed documents is to take place at *"such place as the Inquiry Officer may direct in the presence of the Presenting Officer or any other gazetted officer deputed for the purpose by the disciplinary authority or the other authority having the custody of the records."*

6. How to conduct inspection of listed documents which are held up in the court?

The following alternatives are open in respect of the documents held up in the court and required for inspection by the CO:

(a) An application may be made to the court for making the documents available at least temporarily

(b) If the above request is not allowed by the court, inspection of the documents by the CO may be arranged in the Court

7. Can a document sought by the CO for the purpose of defence be denied?

Any document sought by the CO for the purpose of defence, can be denied only on either of the two grounds. Firstly if the IO is of the opinion that the document is not

relevant to the case. In this case, the IO has to pass a reasoned order as prescribed in the proviso to Rule 14(12) of the CCA Rules.

In addition to the above, authority in possession of the documents may deny the production of documents for reasons to be recorded in writing that the production of the said document is against public interest.

In this connection, para 3.5 of Chapter XI of the Vigilance Manual (1991 Ed) provides as under:

> *3.5 Denial of access to documents which have a relevance to the case will amount to violation of the reasonable opportunity mentioned in Article 311 (2) of the Constitution. Access may not, therefore, be denied except on grounds of relevancy or in the public interest or in the interest of the security of the state. The question of relevancy has to be looked at from the point of view of the Government servant and if there is any possible line of defense to which the document may be in some way relevant, though the relevance is not clear at the time when the Government servant makes the request, the request should not be rejected. The power to deny access on the grounds of public interest or security of State should be exercised only when there are reasonable and sufficient grounds to believe that public interest or security of the State will clearly suffer. Such occasions should be rare.*

8. Generally what are the documents which are not made available by the Head of the Department?

Para 3.6 of the Vigilance Manual (1991 Ed) indicates the following as examples of documents, access to which may reasonably be denied:

i) Reports of a departmental officer appointed to hold a preliminary enquiry or the report of the preliminary investigation of SPE. These reports are intended only for the disciplinary authority to satisfy himself whether departmental action should be taken against the Government servant or not and are treated as confidential documents. These reports are not presented before the Inquiry Officer and no reference to them is made in the statement of allegations. If the accused officer makes a request for the production/inspection of the report of the Investigating Officer, S.P.E., the Inquiring Authority should, instead of dealing with it himself, pass on the same to the Disciplinary Authority concerned, who may claim privilege of the same in public interest, as envisaged in proviso to sub-rule (13) of Rule 14 of CCS (CCA) Rules, 1965.

ii) File dealing with the disciplinary case against the Government servant - The preliminary enquiry report and the further stages in the disciplinary action against the Government are processed on this file. Such files are treated as confidential and access to them should be denied.

iii) Advice of the Central Vigilance Commission. - The advice tendered by the Central Vigilance Commission is of a confidential nature meant to assist the disciplinary authority and should not be shown to the Government servant.

iv) Character roll of the officer. - The CR of the official should not be shown to him.

The above provision has to be perceived in the context of the Right to Information Act and subsequent judicial pronouncements. As is well known, it is mandatory to provide the advice of the CVC. Besides, the employees have acquired right to peruse their Annual Performance Appraisal Reports

9. Can the IO deny allowing a witness named by the CO for the purpose of his/her defence?

IO can deny a witness only on the ground of relevance

10. What is the sequence of events during Regular Hearing?

Following is the sequence of events during Regular Hearing:

(a) Documentary evidence on behalf of the Disciplinary Authority are taken on record
(b) Oral evidence of Disciplinary Authority is taken on record
(c) CO asked to state his/her defence
(d) Documentary evidence on behalf of the Disciplinary Authority are taken on record
(e) Oral evidence of Disciplinary Authority is taken on record
(f) Mandatory question by the IO
(g) Fixing time for submission of briefs by the PO and CO

11. Can the statements recorded during preliminary investigation be relied upon?

In this connection para 6.2 of the Vigilance Manual (1991 (ed) provides as under:

> *Instead of recording the evidence of the prosecution witness, de novo, wherever it is possible, the statement of a witness already recorded at the preliminary inquiry/investigation may be read out to him at the oral inquiry and if it is admitted by him, the cross-examination of the witness may commence thereafter straightaway. A copy of the said statement should, however, be made available to the delinquent officer sufficiently in advance (at least 3 days) of the date on which it is to come up for inquiry. As regards the statement recorded by the Investigating officers of the CBI, which are not signed, the statement of the witness recorded by the Investigating Officer will*

be read out to him and a certificate will be recorded thereunder that it had been read out to the person concerned and has been accepted by him.

12. What is the procedure for procuring the documents demanded by the charged officer?

Inquiring Authority should directly obtain the additional documents demanded by the charged officer. It is incorrect to assign this task to the Presenting officer.

13. What is the order in which the witnesses are to be presented?

The Presenting officer is to lead the State witnesses in the first instance. The order in which the State witnesses are to be led can be left to the discretion of the Presenting Officer. It is desirable to frame the sequence of the witnesses in such a way as to gradually build the case of the Disciplinary authority.

After the State witnesses are examined, the charged officer can be asked to lead defence witnesses, if any, in the order decided by him/her.

14. What are the stages in the examination of witnesses?
Witnesses are examined through the under mentioned three stages:

(a) Examination in chief
(b) Cross examination
(c) Re-examination

15. Who conducts the above three stages of examination:

Examination in Chief is conducted by the party who is producing the witnesses i.e. examination in chief of the State witness will be done by the Presenting officer and examination in chief of the defence witnesses will be done by the Charged officer assisted by the Defence Assistant

Cross examination is done by the opposite party. i.e. Cross examination of State witnesses will be done by the Charged officer, assisted by the Defence Assistant and cross examination of the defence witnesses will be done by the Presenting officer

Re examination will be done by the party who performed examination in chief.

16. What is the scope of Examination in Chief?

Examination in chief is confined to the relevant issue i.e. issues relating to the transaction on which the charges have been framed in the case of State witnesses and the points mentioned in the statement of defence in respect of defence witnesses.

17. What is a leading question?

Leading question is one which indirectly reveals the expected answer to the question.

18. What is the provision regarding leading questions?

Leading questions are prohibited during examination in chief and re-examination. There is no bar on asking a leading question during cross examination. This means that one cannot ask a leading question from one's own witness; but can ask a leading question from the witness presented by the opposite side.

This general rule has an exception viz. that there is no bar on asking a leading question which is introductory in nature. E.g. You are in the working in the store since 2010?

19. What is the scope of cross examination?

Scope of cross is examination is a bit wide. Questions for assailing the credibility of the witness can also be raised.

The following questions are however, prohibited during cross examination:

(a) Questions without any basis
(b) Questions which are obscene or indecent
(c) Questions which are intended to vex or annoy the witnesses

20. What is the scope of re-examination?

Re-examination will be confined to the issues on which cross-examination was conducted.

21. Is there any scope for a second cross – examination?

In case any new issue was raised during re-examination with the permission of the Inquiring Authority, one more opportunity for cross-examination must be afforded.

22. Considering the scope of examination in chief and cross examination, what should be the difference in approaches for these two activities?

It is said that the art of successful examination in chief is to ask questions in such a way that the witnesses understands the answer expected - without the question being a leading question.

On the contrary, the art of cross examination is to ask questions in such a way that the witness does not understands what is the purpose of the question.

23. What is the procedure for recording of evidence by the witnesses?

The statements of the witnesses may be recorded either in narrative form or in question answer form as deemed suitable. Generally, examination in chief may be in narrative form. At times it may even state as under:

> The witnesses confirmed the statement given by him during preliminary investigation and said he had nothing more to add and modify.

Cross-examination and re-examination will be in the form of question and answer. It is desirable that the questions and answers are numbered for the sake of easy reference in the written briefs of the PO and charged officer and in the Inquiry report.

Witness will be asked to sign each page of the statement. Copies given to the CO and PO.

24. What is the stage at which the charged officer is asked to lead evidence?

After the case of the disciplinary authority is over, the charged officer will be asked to state his defence. This is only an offer to the delinquent and if the delinquent does not state his/her defence, the inquiry will proceed.

25. What is the order in which the charged officer will present defence?

Charged officer will first present documentary evidence and then lead oral evidence.

26. Can the CO be questioned by PO?

PO can question the charged officer only if he/she presents himself/herself as a witness.

27. What happens if a witness who had given a statement during preliminary investigation changes stand to favour the delinquent?

Change of stand without any justifiable reason will amount to a misconduct and the Government servant who is guilty of such a misconduct renders himself/herself liable for disciplinary action. In this connection, Central Vigilance Commission Office Order No.
Office Order No. 73/12/2005, dated: 15th December, 2005 provides as under:

> *3. Rule 16, Chapter XIII of Vigilance Manual Vol. I, provides that if a Government servant, who had made a statement in course of a preliminary enquiry, changes his stand during evidence in the enquiry, and if such action on his part is without justification or with the objective of favouring one or the other party, his conduct would constitute violation of Rule 3 of the Conduct*

Rules, rendering him liable fordisciplinary action. Such misconduct in the context of criminal cases becomes all the more grave.

4. The Commission is of the view that this unhealthy tendency on part of public servants needs to be curbed effectively. The Commission, therefore, desires that such misconduct, whenever reported by the CBI, should be viewed with utmost seriousness and necessary disciplinary action initiated promptly.

28. Can a witness be called for the second time?

Under Rule 14(15) of the CCA Rules, the Inquiring Authority may at its discretion allow the Presenting officer to re-call witness. In the event of a witness being re-called and re-examined, care must be taken to provide to the opposite side an opportunity to cross-examine the witness as well. This is not at the discretion of the Inquiring Authority – but a mandate of the principle of natural justice which requires providing reasonable opportunity of defence.

29. Can a hearing be held in the absence of the CO?

In this connection, Vigilance Manual 1999 Ed provides as under:

> 17.5 If in any particular hearing, the accused officer is unable to come for any reason, his Assisting Officer can proceed with the case if he has authorization to this effect from the accused officer. Similarly, the Assisting Officer can submit the defence of the delinquent officer contemplated in Rule 14 (16) of the CCS (CCA) Rules, 1965, if he holds authorisation to this effect from the delinquent officer.

30. Can the inquiry proceed without the charged officer?

Following provision of the Vigilance manual is relevant in this connection:

> *17.5 If in any particular hearing, the accused officer is unable to come for any reason, his Assisting Officer can proceed with the case if he has authorization to this effect from the accused officer. Similarly, the Assisting Officer can submit the defence of the delinquent officer contemplated in Rule 14 (16) of the CCS (CCA) Rules, 1965, if he holds authorisation to this effect from the delinquent officer.*

31. Can the Inquiring Authority question the witnesses?

Rule 14(14) explicitly provides that the Inquiring Authority may also put such questions to the witness as it thinks fit. Two cautions must be borne in mind while exercising this statutory right. Firstly, the parties to the proceedings acquire a right to cross-examine the witness on the issued over which the Inquiring Authority has

examined the wintesse. Secondly, the questions must not be with the object of establishing the charge. Such questions may put the Inquiring Authority in the mantle of the Presenting Officer which may lead to quashing of the proceedings on the allegation of bias.

32. Can the Inquiring Authority question the charged officer?

The Inquiring Authority is required under Rule 14(18) to question the Charged Officer generally about the circumstances appearing against him. However, probing questions which may lead to incrimination of the Charged Officer will cast aspersions about the role of the Inquiring Authority.

Inquiry proceedings were set aside in Moni Shankar Vs. Union of India (UOI) and Anr. [JT2008(3) SC484, (2008)3SCC484, 2008 (3)SLJ325(SC)] for the reason that the Inquiring Authority had exceeded his limit in asking the mandatory question, as may be seen from the following:

> *18. The Enquiry Officer had put the following questions to the appellant:*
>
> > *Having heard all the PWs, please state if you plead guilty? Please state if you require any additional documents/witness in your defence at this stage? Do you wish to submit your oral defence or written defence brief? Are you satisfied with the enquiry proceedings and can I conclude the Enquiry?*
>
> *19. Such a question does not comply with Rule 9(21) of the Rules. What were the circumstances appearing against the appellant had not been disclosed.*

33. What is mandatory question?

Rule 14(18) has a provision that empowers the Inquiry Authority to question the Charged Officer. This question shall be asked in the cases wherein the CO had not presented himself as a witness. Probably the use of the word "shall" in the sub rule has resulted in this being called a 'mandatory' question. However it must be understood that it may not be a question at all. The purpose of this question is to enable the CO to explain the circumstances against him. The IO is expected to question the CO *"on the circumstances appearing against him*" so that the CO can defend himself appropriately.

34. What happens if the deposition of a witness is in a language other than English or Hindi (which ever is the language of the proceedings)?

In this connection, Para 13.6 of the Vigilance provides as under:

> *13.6 If a witness deposes in a language other than English but the depositions are recorded in English, a translation in the language in which the witness deposed should be read to the witness by the Inquiry*

Officer. The Inquiry Officer will also record a certificate that the depositions were translated and explained to the witness in the language in which the witness deposed.

35. What happens if a witness fails to turn up for examination?

A government servant summoned by the Inquiring Authority for tendering evidence in a disciplinary proceedings is bound to attend the same. Failure to do so will amount a misconduct. Therefore, if a witness fails to turn up for inquiry without proper justification the Inquiring Authority may report the matter to the controlling officer of the witness so that disciplinary action could be initiated.

36. Who bears the expenditure incurred by the witnesses and parties for attending the inquiry?

In respect of serving Government Servants, the expenses are to be borne by the respective organization where the witness is employed based on the certificate issued by the Inquiring Authority. Otherwise the expenses will have to be met by the Disciplinary Authority.

37. What facility is provided to the Inquiring Authority for expeditious completion of the proceedings?

DoP&T OM No. 142/5/2003-AVD.I dated 6.4.2004 provides that Inquiring Authority may be relieved of normal duties for 20 days in two spells for timely completion of inquiry.

CHAPTER – 18

BRIEF OF THE PRESENTING OFFICER

1. What is the purpose of the written brief of the Presenting Officer?

Submission of the written brief is the culmination of the activities of the Presenting Officer. During the hearing, the parties to the proceedings present documentary evidence and lead oral evidence. Evidence presented during the hearings serve the purpose of presenting facts. The facts must lead to some inference. The link between the bare facts and the inference is required to be established through logic.

Towards this end, Rule 14(19) of the CCA Rules provides as under:

> *"The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed, and the Government servant, or permit them to file written briefs of their respective case, if they so desire."*

2. Which is a better course of action – making verbal submissions or filing written briefs?

Lawyers generally argue the cases on conclusion of the examination of witnesses in the judicial proceedings. In most of the disciplinary cases, the summing up of the case is done through submission of written briefs. All the parties to the proceedings prefer the submission of written briefs because of the following reasons:

(a) If the case is argued orally, the Inquiring Authority will have to take down notes of the argument and the same will again have to be reduced to writing. Submission of written briefs saves this extra labour for the Inquiring Authority.

(b) Arguing a case is a more difficult task than leisurely writing a brief. Argument calls for certain additional skill i.e. Presentation skills, verbal fluency, presence of mind, etc.

(c) Officials are mostly familiar with the written submission of their proposals and would feel at home while preparing written briefs.

(d) While arguing a case one may miss a point. But written briefs can always be rechecked and shown to an expert before submission and omissions can be avoided.

(e) Above all, the Presenting Officer can get his written brief vetted by the appropriate authorities before submission to the Inquiring Authority.

3. What is the source material from which Presenting Officer prepares the written brief?

The content of the written brief of the Presenting Officer is derived from the following:

(a) Charge Sheet
(b) Statement of defence given by the Charged officer at various stages
(c) Evidence led on behalf of the parties – documentary and oral
(d) Daily Order Sheets
(e) Interlocutory Orders passed by the Inquiring Authority in the course of Inquiry

4. What information in the Daily Order sheet and the Interlocutory Orders passed by the Inquiring Authority are of use in the written brief of the Presenting Officer?

It is good practice for the Presenting officer to highlight that the charged officer has been given full opportunity of defence in the Inquiry – say the adjournments sought by him were granted, documents sought by him were made available, etc. Information In this regard, will be available in the Daily Order Sheets and the Interlocutory Orders of the Inquiring Authority.

5. What is the sequence in which the briefs are presented by the Presenting Officer and the charged officer?

Presenting Officer's brief is to be submitted first. Charged officer is allowed to file his/her brief after perusal of the written brief submitted by the Presenting Officer.

6. What is the authority or justification for asking the Presenting Officer to submit brief in the first instance?

Rule 14 (19) does not explicitly state that the Presenting Officer's brief must be submitted in the first instance. However, DoPT OM No. 11012/18/77-Estt.(A) dated 2 Sep 1978 provides that the Presenting Officer's brief must be submitted in the first instance and a copy thereof must be made available to the charged officer. This OM explicitly states

> *"In case the copy of the brief of the Presenting Officer is not given to the Government Servant, it will be like hearing arguments of the Presenting Officer at the back of the Government Servant. In this connection attention is also invited to the judgment of the Calcutta High Court in the case of Collector of Customs Vs. Mohd. Habibul [(1973) 1 SLR 321 (Cal)] in which it is laid down that the requirements of Rule 14(19) of the CCS (CCA) Rules 1965 and the principles of natural justice demand that the delinquent officer should be served with a copy of the written brief filed by the Presenting Officer before he is called upon to file his written brief."*

.

7. While the charged officer has the benefit of knowing the submissions of the Presenting Officer before preparing the defence brief, the latter is denied a similar opportunity. Does it not put the Presenting Officer in a disadvantageous position?

One of the cardinal rules in criminal jurisprudence is that the prosecution has to prove the case without relying upon the defence. The following observation of the Hon'ble Supreme Court in Sharad Birdhi Chand Sarda vs State Of Maharashtra on 17 July, 1984 [1984 AIR 1622, 1985 SCR (1) 88] is relevant in this context:

> *It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view.*

Accordingly the Presenting Officer has to submit his/her written brief without any reference to the submissions by the charged officer.

On the other hand the charged officer has to counter the allegations leveled in the charge sheet and controvert the submissions by the Presenting Officer. Thus it is in order that the Presenting Officer's written brief is made available to the charged officer and not vice versa.

8. What are the points to be taken care of by the Presenting Officer while preparing the written briefs?

While preparing the written brief the Presenting Officer should pay attention to the following aspects:

(a) **Form** : Although no form has been prescribed for the written brief of the Presenting Officer it is desirable that the same conforms to a form which will facilitate easy presentation and effective communication of the ideas

(b) **Facts**: The brief should contain all the relevant facts which help in establishing the charge and also the fact the charged officer has been provided with reasonable opportunity. Every inference/conclusion in the brief must be duly supported by evidence. This the facts based on which the conclusions are drawn must be pointed out,

(c) **Logic:** Bare facts may not be able to lead to any conclusion. The facts are to be linked to the charge through logic.

(d) **Language**: Although, ideas constitute the backbone of the brief, yet the language must be faultless, powerful, impressive and easy to understand.

9. What form will be appropriate for the written brief of the Presenting Officer?

A suggested form is appended at the end of this chapter.

10. What is the role of logic in the written brief of the Presenting Officer?

We have seen in an earlier chapter that a charge stems from a set of facts. The Facts are proved through evidence. Logic is the linkage which connects evidence to the charge through facts.

For example, the charge against an officer is that he had issued a false certificate of having inspected a product on a date when the product was not in existence. Following pieces of evidence were produced during the inquiry:

(a) Inspection report dated *Day D* duly signed by the charged officer
(b) Stock register of finished product as on *D-4*
(c) Stock register of the raw material as on *D-10*
(d) Gate pass for exit of the finished product on *D-3,D-2* and *D-1*
(e) Entry record of raw material for *D-9* to *D-1*
(f) Expert opinion on how much raw material would be required for preparing one unit of product.

Above facts are seemingly disjointed and do not lead anyone anywhere. There is a logical chord running through the above disjoint pieces of facts, which will lead to the establishment of the charge when linked logically. Presenting Officer's job is to show as to how different pieces of evidence taken together lead to establishing the charge

11. How important is the role of *language* in the preparation of the written brief of the Presenting Officer?

The basic purpose of preparing the written brief is presenting the details and convincing the Inquiring Authority about the reasons for concluding that the charges are proved. The facts to be presented in the brief may be many. The analysis and presentation of these facts call for communication skill of a fairly high order. The brief is required to be read and understood by the Inquiring Authority without any clarification from the Presenting Officer. (Obviously, the Inquiring Authority will be reading the brief at his convenience and the Presenting Officer is not expected to be present for offering any explanation).

Besides, verbal presentation has certain advantages such as body language, voice modulation, volume, pitch, etc. If the case is verbally argued, the Presenting Officer may be able to emphasize his points by raising his voice or slowing the pace of delivery. On the other hand, the Presenting Officer is *arguing* his case through the written brief and hence his brief must be able to *speak* loud and clear. Therefore, special efforts must be made by the Presenting Officer to prepare his written brief in a lucid style, endowed with a logical sequence. The Presenting Officer should therefore adopt an effective style of writing. It is desirable to type the vital points in bold letters or otherwise highlight the same.

12. How many copies of the written brief are to be submitted by the Inquiry Authority?

Ideally, the Presenting Officer should prepare as many copies of the written brief as the number of charged officers (applicable in the case of common proceedings) and an additional copy each for the Inquiring Authority and the Disciplinary Authority. This will obviate the need for preparation of additional copies by the Inquiring Authority.

13. To whom does the Presenting Officer send the written brief?

Normally, Inquiring Authorities adopt two methods for obtaining the briefs from the parties:

a) The Inquiring Authority may direct the Presenting Officer to submit two copies of the brief so that it (Inquiring Authority) may forward a copy to the Charged Officer.

b) Alternatively, The Inquiring Authority is also at liberty to direct the Presenting Officer to forward a copy of the written brief to the Charged Officer and then send another copy to the Inquiring Authority along with proof of delivery to the charged officer.

In the later event, care must be taken by the Presenting Officer to obtain the acknowledgment of the Charged Officer for the delivery of the brief. A copy of proof of delivery of the brief to the Charged Officer must be sent to the Inquiring Authority along with the copy of the brief meant for the Inquiry Officer.

In either case, the time limit prescribed by the Inquiring Authority for submission of the brief must be strictly adhered to. If, on account of any unavoidable reason, the time limit could not be complied with, Inquiring Authority must be informed of the reason and extension obtained with the knowledge of the Charged Officer.

Annexure

Written Brief of the Presenting Officer

1. Introduction: It is desirable that the brief starts with an introduction wherein the details of the case may be given. The introduction may run something like this:

> "Charges were framed by xxxxx (Disciplinary Authority) against Shri. ABC (name and designation), under Rule 14 of the CCS (CCA) Rules 1965 vide OM No. xxxxx dated xxxxx. On the denial of the charges by Shri ABC, it was considered necessary by the Disciplinary Authority to hold an inquiry into the matter and accordingly Shri. Mmmmmm (name and designation) was appointed as the Inquiring Authority and the undersigned viz. sssssss (name and designation) was appointed as the Presenting Officer. Inquiry was held during xxxxx (date of commencement of the inquiry) and yyyyyyy (date of conclusion of the inquiry). The Inquiring Authority ordered on yyyyyy that the written brief of the Presenting Officer be submitted by zzzzzz (date). Subsequently, on the request of the Presenting Officer time for submission of the brief was extended to kkkkk under intimation to the charged officer. Accordingly this written brief is being submitted."

2. Charge: The second item in the written brief must be the details of the charges. The para may read

> "The articles of charge framed against Shri. ABC are: mmmmmmm,mmm"

3. Proceedings during the Preliminary Hearing: Details such as the denial of the charges by the Charged Officer during the Preliminary Hearing, the details of the State documents admitted and disputed by the Charged Officer may be indicated here.

4. Opportunities given to the Charged Officer: Providing reasonable opportunity to the Charged Officer is an essential requirement of the disciplinary proceedings. Besides, the Charged Officer is likely to mention in his written brief that he was not provided with reasonable opportunity. Hence, the Presenting Officer should commence his contentions with a submission about the opportunities given to the Charged Officer. Presenting Officer should highlight the opportunity given to the Charged Officer for presenting additional documents/witnesses. Besides, permission granted to the Charged Officer for engagement of Defence Assistant, any lenience shown to the Charged Officer, any facility availed by him, etc. may be specifically brought out here. It is desirable that the Presenting Officer anticipates the arguments likely to be taken by the Charged Officer and provides answers to the same, to the extent possible. If any document which was totally irrelevant was requested by the Charged Officer and the same was denied by the Inquiry Officer, one can be more than sure that the Charged Officer will be mentioning the same in his written brief and trying to argue that he was denied reasonable opportunity. The Presenting

Officer should anticipate such argument and highlight in his brief that the Charged Officer was provided with reasonable opportunity.

5. Case of the Disciplinary Authority: This paragraph will predominantly rely on the statement of imputations of the misconduct. Here the Presenting Officer may indicate the facts on the basis of which the charge is required to be proved.

6. Evidence on behalf of the Disciplinary Authority: After narrating the case of the Disciplinary Authority, the Presenting Officer may give the details of the evidence actually led on behalf of the Disciplinary Authority vis-a-vis the evidence mentioned in the Charge Sheet (Annexures III and IV). Any deviation, such as not presenting any witness mentioned in the charge sheet or presenting additional witnesses with the permission of the Inquiring Authority may also be indicated.

7. Evidence on behalf of the Charged Officer: The details of the oral and documentary evidence presented by the Charged Officer may be listed here.

8. Evaluation of evidence: This is the most crucial portion of the written brief. In this portion, the Presenting Officer should highlight the facts established by each piece of evidence. There are two ways of achieving this, viz.

(a) The Presenting Officer may take up the facts to be established for proving the charge one by one, and indicate the evidence which establishes the fact.

(b) Alternatively, the Presenting Officer may take up each item of evidence presented on behalf of the Disciplinary Authority and indicate what points have been established by each piece of evidence.

9. Analysis of the case of the Charged Officer: Although the case of the Disciplinary Authority is to stand on its own legs, it is advisable for the Presenting Officer to anticipate and counter the submissions of the Charged Officer. This will help the Inquiring Authority to evaluate the complete case and draw final conclusions. However, this is an area where the Presenting Officer will have to do considerable brain teasing. The case of the Charged Officer can be inferred only from his submissions. But some Charged Officers do not present any written submissions till the conclusion of the hearing. Even the written Statement of Defence in response to the Charge Sheet will contain a one line denial such as “I deny the charges”. As a result, the Presenting Officer may not have any document indicating the stand of the Charged Officer. Under such circumstances, the Presenting Officer will have to construct the case of the Charged Officer from the evidence produced by him. The Presenting Officer should try to undermine the value of the defence witnesses citing acceptable reasons. In this paragraph, the Presenting Officer’s argument should run on the following lines:

(a) That the case of the Charged Officer is not logically possible.

(b) That the Charged Officer has failed to establish what he tried to do.

(c) That the witnesses led by the charged officer are not reliable because of contradictions with the established facts.

(d) That the defence witnesses were interested parties and hence their evidence cannot be relied upon.

(e) Inconsistency and absence of corroboration in the statements of the Defence Witnesses.

10. Conclusion: Finally, the brief of the Presenting Officer should contain a specific assertion to the effect that on the basis of the evidence presented during the Inquiry, Charges should be held as proved. At this stage, the Presenting Officer should not bother about adequacy of evidence. If there is some evidence pointing towards the guilt of the Charged Officer, the charges should be held proved on the basis of preponderance of probability. If the evidence produced in the inquiry leads to proof beyond doubt, the Presenting Officer should specifically mention the same in his brief.

CHAPTER - 19

EVALUATION OF EVIDENCE

> "The astonishing amount of perjury in courts of law is a sad commentary on human veracity. In spite of the oath, more untruths are probably uttered in court than anywhere else. This deviation from veracity ranges from mere exaggeration all the way to vicious perjury. Much of this untrue testimony grows directly out of human nature under unusual stress and is not an accurate measure of truth-speaking general. In order to shield a friend or help one to win in what is thought to be a just cause, or because of sympathy for one in trouble, many members of the frail human family are inclined to violate the truth in a court of law as they will not do elsewhere."
>
> *In the words of Osborn (The problem of proof - Albert S. Osborn, PP 22, 23, New York, Matthew Bender and Co. 1926 - quoted in (2) ibid, P.226).*

The above stated nature of human beings makes the task of the functionaries in Disciplinary Proceedings all the more challenging. Culling out truth from the conflicting statements of the contesting parties is perhaps the most challenging part of the assignment of the Disciplinary Authority and the Inquiring Authority. This complex process is known as evaluation of evidence.

Evaluation of evidence is perhaps the most complex and challenging area in the gamut of activities during departmental proceedings. Skill in evaluation of evidence is required to be possessed by almost all the functionaries. Presenting Officer is required to evaluate evidence and present his version in the brief of the PO. Inquiring Authority is required to evaluate evidence to arrive at the conclusion as to whether the charges are proved. Disciplinary Authority is required to make first hand appraisal of evidence and take a view as to whether the Inquiring Authority's

conclusion are acceptable. Appellate Authority is also required to perform the above function.

Although skill can be developed through exercises, case studies, etc. in this chapter an attempt is being made to provide the underpinning knowledge necessary for evaluation of evidence.

1. What are the various types of evidence led in departmental proceedings?

Generally two types of evidence are led in departmental evidence viz.

(a) documentary evidence and

(b) oral evidence.

In contrast, in criminal trials certain objects (such as weapons or clothes worn by the victim, etc.) may also be produced as evidence and these are known as Exhibits.

2. What is the role of evidence in deciding the case?

Following are some of the cardinal principle in drawing conclusions in judicial/quasi-judicial proceedings:

(a) Conclusions must be based on evidence
(b) There is no room for conjectures or surmises in drawing conclusions
(c) Reliance must be placed on the evidence made available to the Charged Officer during the inquiry
(d) No evidence behind the back of the Charged Officer.
(e) Decision making authorities should not import personal knowledge into the case

3. What is meant by the standard of proof?

Standard of proof or level of proof, refers to the quality of evidence produced to establish a fact. In a sense it indicates as to how strongly the evidence establishes the fact it purports to prove. Generally the following three levels of proof are referred to in judicial/legal proceedings:

(a) Preponderance of probability
(b) Clear and convincing evidence
(c) Proof beyond reasonable doubt

4. What is the difference between the criminal trial and departmental proceedings in so far as evaluation of evidence is concerned?

Generally the following three points of distinction exist between criminal trial and departmental proceedings in so far as evaluation of evidence is concerned:

(a) In criminal proceedings, standard of proof required is proof beyond reasonable doubt. On the other hand, preponderance of probability is adequate to establish the charge in departmental proceedings.

(b) Hearsay evidence is strictly prohibited in criminal trials. However, there is no bar against the reception of hearsay evidence by domestic tribunals. What value is to be attached to such evidence depends upon the facts and circumstances of each case.

(c) In domestic inquiries, a relaxed procedure is adopted for allowing circumstantial evidence.

5. What is pre-ponderance of probability?

Literal meaning of the word ***preponderance:*** is superiority in power, influence number or weight.

As a level or standard of proof, pre-ponderance of probability means "more likely to have happened than otherwise.

6. What is hearsay evidence?

When a witness states a fact based on what he/she had heard from some other source without being a direct witness to the event, evidence tendered by such a person is known as hearsay evidence

7. What are the rules regarding the admissibility of hearsay evidence?

Hearsay evidence is prohibited in criminal trials. On the other hand, during departmental proceedings hearsay evidence can be taken into account in establishing the charge if there is corroborative material'.

8. What is circumstantial evidence?

Circumstantial evidence is the opposite of direct evidence. When no eyewitness is available, issues can be decided based on circumstantial evidence.

9. What are the rules regarding circumstantial evidence?

Tests laid down by the Hon'ble Supreme Court in the Case of Hanumant Vs. State of Madhya Pradesh [AIR 1952 SC 343, 1953 CriLJ 129, 1952 1 SCR] is applied in the matter of evaluation of circumstantial evidence in criminal trials. This has been reiterated in the case of Sharad Birdhi Chand Sarda vs State Of Maharashtra [1984 AIR 1622, 1985 SCR (1) 88] in the following terms:

> *"(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.*
> *xxxx*
>
> *(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,*
>
> *(3) The circumstances should be of a conclusive nature and tendency.*
>
> *(4) They should exclude every possible hypothesis except the one to be proved, and*
>
> *(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*
>
> *These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."*

In quasi-judicial proceedings, relaxed norms are applied based on the principle of pre-ponderance of probability rather than conclusive nature of evidence and excluding every other hypothesis.

10. Can a charged officer be acquitted of the charges even without putting up any defence at all?

The charge leveled by the Disciplinary authority needs to be proved by leading evidence on behalf of the Disciplinary Authority. Charged officer has no duty to prove his innocence. Hence the charged officer can be acquitted based on the failure of the Presenting officer to establish that the charges have been proved.

11. What is the concept of burden of proof?

General rule is that one who wants the court (or the Inquiring Authority) to believe something, must lead evidence to establish the fact. This is known as the burden of proof.

If the disciplinary authority has leveled the charge that an employee had left the office before closing hours and without taking permission, evidence must be led on behalf of the Disciplinary Authority to establish the same. If the defence of the Charged Officer contends that that he/she had taken permission to leave early, he/she must lead evidence to establish this fact. If the stand of the Disciplinary Authority is that the officer from whom the Charged Officer claims to have taken permission is not competent to grant permission, it is for the Disciplinary Authority to lead evidence in support of this fact.

12. Can the statement of a witness be taken into account, even if he/she was not subjected to cross-examination?

Witnesses are to be offered for cross examination. If the opposite side chooses not to exercise the right of cross-examination, there is no bar in taking into account the statement of such witnesses. If cross examination of a witness is not allowed or the witness did not present himself/herself for cross-examination, the statement of such witness should not be taken into consideration at all,Union of India Vs. P Thiagarajan [1998(8) JT 179]

13. What are the factors based on which the statement of a witness is given credence?

Following are the credibility factors in respect of oral evidence:

Factor	How does it apply
Integrity of the witness	Statement made by a person lacking integrity carries low credibility
Interest in the outcome of the case	A person who is interested in the outcome of the proceedings carries low credibility
Competence	Statement on technical issues are to be made by persons who are conversant with it. For example, whether two signatures are alike must be affirmed by a handwriting expert
Conduct	A witness who does not exaggerate, admits what he/she did not see or hear carries more credence
Consistency	Whether the statement is free from any self contradiction
Corroboration through other evidence	Whether the statements are in tune with the evidence derived from other sources.
Conformity with	A witness who states things which are incredible for a

experience	normal human mind is hard to believe.
Conformity with normal human conduct	A brother casting aspersions on the character of his sister is difficult to believe.
Demeanour	How does the witness look during deposition

14. How far the credibility of a witness depends upon his/her status?

Status has no role in determining the credibility of witness

15. What is meant by demeanour?

Demeanour denotes the posture and behavior of the witness while deposing. This constitutes an important input in determining the credibility of evidence tendered by the witnesses. Generally the following constitute demeanour:

- hesitation
- doubts
- pace of deposition
- variations in tone
- confidence
- calmness
- posture
- eye contact or the lack of it
- facial expression i.e. bright or pale, etc.

Criminal Procedure Code provides that Magistrate should make note of the demeannour of the witnesses. Similarly, the Inquiring Authority should also make note of the demeanour of the witnesses.

16. What are the general principles for evaluation of evidence?

- Evidence is to be weighed; not counted
- Affirmative statements carry more weight than negative statements
- Actions carry more weight than words
- Even un- impeached evidence may be rejected
- Rejection of evidence by one does not necessarily mean the acceptance of the opposite

17. Is there any exception to the rule that facts must be established through evidence and the decision making authority must not import personal knowledge into the case?

Irrefutable matters of common sense and laws of science do not require any evidence. For example, it is a matter of common sense that capacity of a super deluxe bus cannot be seventy five. An Inquiry authority may reject evidence to the

effect that a person travelled in a super deluxe bus carrying eighty passengers from Delhi to Kanyakumari. There is no need for controverting the above statement through the crew of the bus or another witness who had seen the above bus. Similarly an Inquiring Authority can conclude that any object thrown above has to come down. There is no need for a physics professor to come and testify about the law of gravitation.

CHAPTER – 20

EX-PARTE INQUIRY

1. What is ex parte Inquiry?

An inquiry in which the charged officer is not represented is known as Ex- parte inquiry

2. What is the statutory provision regarding ex parte proceedings?

Rule 14(20) of the CCA Rules provides as under:

> *" If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex parte."*

3. What are the conditions under which ex-parte inquiry may be resorted to?

As may be seen from the above extracted provision of the Rule, ex-parte inquiry can be resorted to only when the following conditions are satisfied:

(a) Articles of charge should have been delivered

(b) The charged officer had failed to submit the written statement of defence on or before the specified date or

(c) Does not appear in person before the Inquiring Authority or

(d) Fails or refuses to comply with the provisions of the CCA Rules

4. If delivery of articles of charge is pre-requisite for conducting ex-parte inquiry, what will be the possibility of going ex-parte when the charged officer evades or refuses acceptance of Charge Sheet?

Firstly it must be appreciated that delivery of charge Sheet does not mean physical delivery and obtaining an acknowledgement therefor. Constructive delivery of Charge Sheet is adequate to hold that the articles of charge have been delivered.

In this connection, para 20.2 of Chapter X of the Vigilance Manual Volume I (1991 Edition) is extracted hereunder:

"20.2 If the Government servant evades acceptance of the articles of charge and/or refuses to accept the registered cover containing the articles of charge, the articles of charge will be deemed to have been duly delivered to him as refusal or a registered letter is normally tantamount to proper service of its contents."

As a measure of precaution, the charge sheet may be pasted on the notice board, doors of the residence of the charged officer, uploaded on the web site of the organization and an advertisement may be issued in a news paper regarding the initiation of the disciplinary proceedings. For the pasting of the charge sheet on the doors, independent witnesses' statements may be obtained.

5. Is there any difference between holding ex-parte inquiry and dispensing with Inquiry under Rule 19 (ii) of the CCA Rules?

The following differences exist between ex-parte inquiry and dispensing with Inquiry

S.No	Ex-parte inquiry	Inquiry dispensed with under Rule 19(ii)
(a)	Decision is taken by the Inquiring Authority	Decision is taken by the Disciplinary Authority
(b)	There is no statutory requirement of recording any reasons as to why inquiry is to be held ex-parte	There is a statutory mandate to record reasons as to why it is not reasonably practicable to hold an inquiry in the manner provided in the rules
(c)	Conditions precedent specified in rule 14(20) must be satisfied	No conditions are prescribed in the Rules; Disciplinary Authority has to record the reason as to why it is not reasonably practicable to hold the inquiry in the manner provided in the Rules
(d)	During ex-parte Inquiry, the Charges need to be proved by leading evidence on behalf of the Disciplinary Authority	When inquiry is dispensed with, there is no question of leading evidence or establishing that the charge is proved. It is for the disciplinary authority to consider the evidence on record and pass a reasoned order imposing penalty
(e)	There is scope for the Charged Officer turning up at a later date and seeking to participate in the ex-parte inquiry	Once inquiry is dispensed with, the Charged Officer has no right to seek participation in the Inquiry
(f)	There is a possibility that the inquiry may not result in any charge being established	The process will end in imposition of penalty

From the foregoing, it may be seen that ex-parte inquiry provides better protection to the employee and therefore dispensing with inquiry should not be treated as a substitute for ex-parte inquiry. Where there is scope for holding ex-parte inquiry, the authorities should not resort to dispensing with inquiry under Rule 19(ii).

6. What precautions are necessary before for conducting ex-parte inquiry?

Following pre-cautions are necessary before resorting to ex-parte inquiry"

(a) Before proceeding ex-parte, Inquiring Authority must ensure that communications are being sent to the correct address of the Charged Officer

(b) Secondly, it must be ensured that sufficient time is being provided for attending the inquiry, with due regard to the travel arrangement between the place of the inquiry and place of posting or residence of the Charged Officer .

(c) Thirdly the Inquiring Authority must ensure that the Charged officer is not on sanctioned medical leave or on any official assignment

(d) If the Charged Officer is under suspension, Inquiring Authority must check whether the non-attendance is attributable to the non-payment of subsistence allowance

(e) Whether the Charged Officer has been warned that continued absence would result in the proceedings being conducted ex-parte

7. Can the inquiry be held ex-parte if the charged officer seeks adjournment on medical ground without producing medical certificate?

It has been held in the case of Union of India Vs. I S Singh [1994 SCC Supl. (2) 518] that under such a situation, the Inquiring Authority should either ask for a copy of the medical certificate or in case of doubt, direct the charged officer to get examined by a medical officer. Taking recourse to ex-parte inquiry would amount to violation of the principle of natural justice. The following extract is relevant:

> *So far as the second ground is concerned, a few facts need be stated. An inquiry was held, in the first instance, which was not found to be in order by the disciplinary authority who directed a fresh inquiry. When notices were issued in the second inquiry, they could not be served on the respondent. On a later date, the respondent sent an application stating that he is suffering from unsoundness of mind and that the inquiry may be postponed till he regains his mental health. The respondent also states that he sent his medical certificate along with he is application. (Indeed, according to him, he sent not one but three letters to the said effect.) The report of the Enquiry Officer, however, does not show that he paid any attention to these letters. If, indeed,*

the letters were not accompanied by medical certificates, as is now asserted by Shri Mahajan, learned counsel for the appellants, the proper course for the Enquiry Officer was to have called upon the respondent either to produce a medical certificate or to direct him to be examined by a medical officer specified by him. The inquiry report does not even refer to the request contained in the said application nor does it mention why and for what reasons did he ignore the said plea of the respondent. The Enquiry Officer proceeded ex parte, in spite of the said letters and made his recommendation on the basis of which the aforesaid penalty was imposed. It is evident from the facts stated above that the Enquiry Officer has not only conducted the inquiry in a manner contrary to the procedure prescribed by Rule 14(2) of CCS (CCA) Rules but also in violation of the principles of natural justice.

8. What procedure is to be followed during ex-parte proceedings?

During ex-parte proceedings, the Presenting Officer should be directed to lead evidence and establish the charge.

As the Charged Officer does not participate in the proceedings, the stage of cross – examination of State Witnesses may not take place. However, the Inquiring Authority is at liberty to put questions as it thinks fit. Power in this regard has been given under Rule 14(14) of the CCA Rules. Inquiring Authority should however ensure that the questions put by it are not such as to establish the charge. Any questions of this nature may present the Inquiring Authority as wearing the mantle of Presenting Officer and cast aspersions on its neutrality.

Even though the Charged Officer is not attending the Inquiry, the Inquiring Authority should ensure that copies of all the documents relating to the inquiry are sent to the Charged Officer – for example the Daily Order Sheets, statements of the witnesses, written brief of the Presenting officer, etc.

The Inquiring Authority should submit its report to the Disciplinary Authority together with other documents as in any other inquiry.

9. Can the Charged Officer be allowed to participate in the ex-parte inquiry at a later stage?

Ex-parte inquiry, once commenced, does not amount to closing the doors for the Charged Officer. This is only an enabling provision which provides for continuing with the inquiry despite non-co-operation by the Charged Officer. It should not be perceived as a penal provision for putting the Charged Officer to a disadvantage. The Charged Officer who could not or intentionally did not attend a few hearings does not lose his/her right of reasonable opportunity of defence. Accordingly, the Charged Officer cannot be prevented from participating in the inquiry at a later stage.

There may be cases wherein the Charged Officer may try to put the clock back i.e. the Charged Officer may like a witness to be recalled and cross-examined. Such requests need to be considered on merit. If the Charged Officer provides sufficient

satisfactory reason for non-appearance, the request for putting the clock may be considered.

Thus the position can be summarized as under:

(a) Future participation is a matter of right of the Charged Officer
(b) Putting the clock back is a matter of discretion of the Inquiring Authority

CHAPTER – 21

POST RETIREMENT PROCEEDINGS

1. What is the status of relationship between a pensioner and the former employer?

Rule 8 of the CCS (Pension) Rules 1972 provides that grant and continuance of pension is subject to future good conduct.

2. What are the conditions under which pension can be withheld or withdrawn?

Following are the two conditions under which pension may be either withheld or withdrawn:

When the pensioner is

(a) convicted of a serious crime or

(b) found guilty of a grave misconduct

3. Who has power to withhold or withdraw pension?

Rule 8(1) (b) of the Pension Rules provides that Appointing Authority order withholding and withdrawing pension

4. What is the procedure to be followed in the case of a pensioner convicted of a serious crime?

As per rule 8(2), action regarding withholding or withdrawing pension is to be taken in the light of the judgment of the court relating to the conviction.

Although it is not explicitly stated in the rules, such an action should be preceded by issue of a show cause notice and examination of the reply by the pensioner. This course of action will be on the same analogy with Rule 19(i) of CCA Rules under similar circumstances.

5. What is the procedure to be followed in the case of a grave misconduct?

Rule 8(3) provides for issue of a notice specifying the action proposed to be taken and the grounds for the same. Time of fifteen days may be granted for reply which is extendable for another span of fifteen days. Final order may be passed taking the reply into account.

6. What is the scope of the expressions *serious crime* and *grave misconduct* occurring in Rule 8(1)?

The expressions have not been defined in the rule. However, Explanation (a) and (b) under Rule 8 indicate that phrases *include* violation of the provisions of Official Secrets Act 1923. Reference to the above is an indication of the level of the violations which warrant action under Rule 8 of the Pensions Rules.

7. What is the scope regarding the quantum and duration of reduction of pension under Rule 8 of the Pension Rules?

Proviso to Rule 8(1) provides that reduction cannot be below the amount of Rs. Three thousand five Hundred

The reduction can be for a specified period or permanently.

8. What other condition must be satisfied while exercising the powers under Rule 8 of the Pension Rules?

Rule 8 (4) provides that where President is the competent authority, Union Public Service Commission must be consulted before passing of the order.

9. What action can be taken as regards pension and gratuity in respect of a misconduct committed during service?

Rule 9 of the CCS (Pension) Rules 1972 lays down the following three powers for the President as regards pension and gratuity:

(a) Withholding pension or gratuity, or both, either in full or in part,

(b) Withdrawing pension in full or in part, whether permanently or for a specified period,

(c) Ordering recovery from pension or gratuity of the whole or part of any pecuniary loss caused to the Government,

10. What are the circumstances under which the powers under Rule 9 of the CCS (Pension) Rules can be invoked?

Powers under Rule 9 can be invoked "*if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement"*

11. What the scope regarding the quantum of reduction of pension under Rule 9 of the Pension Rules?

Second proviso to Rule 9(1) of the Pension Rules provides that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three thousand five hundred per mensem.

12. What are the similarities and distinctions between Rule 8 and Rule 9 of the CCS (Pension) Rules?

Similarities

(a) Both deal with reduction of Pension
(b) Both prescribe a minimum pension to be left after withdrawal/withholding
(c) Withdrawal may be for specified period or permanently

Points of distinctions

S. No	Rule 8	Rule 9
(a)	Relates to post-retirement conduct of the pensioner	Relates to the misconduct committed during the service period – noticed either during the service or after retirement
(b)	Confined to withdrawing pension only Question of withholding does not arise because action is initiated after the sanction of pension For the same reason, this rule does not deal with gratuity.	Provides for withholding of gratuity and pension (if the same were not sanctioned by the time action is taken) Withdrawal of pension – as pension has already been sanctioned, gratuity also might have been released (in cases where the misconduct committed during service period comes to notice after retirement. Recovery from pension
(c)	Order for withdrawal of pension is to be made after issue of show cause notice	Order may be made only if the person is found guilty of grave misconduct or negligence in a departmental or judicial proceedings
(d)	Powers are vested with Appointing Authority	Powers vest only with the President.
(e)	Consultation with UPSC is necessary only if the powers are exercised by the President (in the capacity of Appointing Authority)	Consultation with UPSC is always necessary because President alone has powers under Rule 9.

(f)	Action must be initiated on the basis of conviction in a serious crime or grave misconduct	Basis of action must be found guilty of grave misconduct or negligence in a departmental or judicial proceedings.

13. What are the major distinctions between initiating disciplinary proceedings before retirement and those initiated thereafter?

S.No.	Initiating proceedings while in service	Initiating proceedings after retirement
(a)	Appropriate disciplinary authority as prescribed under CCA Rules, may initiate proceedings	Proceedings can be initiated only with the approval of the President. Rule 9(b)(i) of Pension Rules
(b)	Disciplinary proceedings can be initiated against a serving employee irrespective of the time of commission of the misconduct. Although inordinate delay between the commission of misconduct and initiation of proceedings is questionable, only unexplained delay will have the effect of vitiating the inquiry. Besides, there is no statutory provision regarding the period within which the proceedings are to be initiated.	There is a statutory period of limitation regarding initiation of post retirement proceedings/ Rule 9(b)(ii) of Pension Rules. Post retirement proceedings cannot be in respect of a misconduct committed four years before initiation of proceedings.
(c)	Respective disciplinary authority will decide as to where the proceedings are to be held	Rule 9(b)(iii) of Pension Rules provides that the proceedings shall be conducted by such authority and in such place as the President may direct
(d)	Final orders will be issued by the prescribed disciplinary authority	Final orders are to be issued in the name of the President. [G.I., M.F., O.M. No. F. 19 (9)-E. V/66, dated the 6th June, 1967.]
(e)	Consultation with UPSC will be necessary only in such cases falling within the ambit of Article 320(3) (c) of the	Consultation with UPSC is mandatory in all cases of *persons serving under the Government of India or the Government of a State in the Civil capacity*

Constitution read with Union Public Service Commission (Exemption from Consultation) regulations, 1958.

14. What is the legal sustainability of continuing the proceedings after the retirement of the delinquent?

This question came up for consideration of the Supreme Court in the case of D V Kapoor Vs. union of India [1990 AIR 1923, 1990 SCR (3) 697, 1990 SCC (4) 314, JT 1990 (3) 403] and the Hon'ble Supreme Court had ruled as under:

> *In the instant case, merely because the appellant was allowed to retire, the Government is not lacking jurisdiction or power to continue the proceedings already initiated to the logical conclusion thereto. The only inhibition is that where the departmental proceedings are instituted by an authority subordinate to the President, that authority should submit a report recording its findings to the President. That has been done, and the President passed the order under challenge. Therefore, the proceedings are valid in law and are not abated consequent to voluntary retirement of the appellant and the order was passed by the competent authority, i.e. the President of India.*

15. What happens to the ongoing disciplinary proceedings which could not be completed before the retirement of the employee?

As stated above, the proceedings can be continued under Rule 9(2) (a) of the Pension rules subject to the condition that the findings will be submitted to the President.

16. What is the position regarding disbursement of retirement benefits in respect of a person against whom disciplinary proceedings are pending at the time of superannuation?

Hon'ble Supreme Court in its judgment dated 14 August 2013 in Civil Appeal No.6770/2013 [State of Jharkhand & Ors. Vs Jitendra Kumar Srivastava has held that pension and pensionary benefits being a form of property, a person can be deprived of it only through the authority of law, as prescribed in Article 300A of the Constitution. Executive instructions cannot take the place of law and therefore in the absence of any provision in any of the Rules, for example, Pension Rules, 1972 any action to deprive the retired employee of the retirement benefits would be illegal. It is significant to note that Rules 8 and 9 of the Pensions Rules provide for withholding of pension only if the Government Servant is found guilty. Although the above judgment is based on the rules applicable to the Jharkhand State, the position does not appear to be different in the light of the CCS Pension Rules 1972 either.

17. In the light of the four year limitation for initiation of post retirement disciplinary proceedings, what is the effective date of commencement of proceedings?

Rule 9(6) of the Pension Rules provides as under

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date ; and

(b) judicial proceedings shall be deemed to be instituted –

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the court.

18. Is there any condition regarding the time gap between the misconduct and initiation of proceedings as regards proceedings initiated before retirement and continued thereafter?

The Pension rules do not prescribe any fetter in this regard giving an impression that a charge sheet can be issued on the date of retirement in respect of misconduct committed decades ago and the proceedings can be continued under Rule 9(2)(a) of the Pension Rules. However, the following observation of the Hon'ble High Court of Delhi in O.P. Gupta v. Union of India 1981(3) SLR 778, lays down that the four year limitation applies even in respect of such cases:

"17. In other words is the deeming provision in Rule 9 so unbridled? Can the provision be used to keep the inquiry alive for any number of years or indefinitely? Can it be 'deemed' that even after 20 years the inquiry is still not concluded, as in the present case? Considering public interest and difficulties in Government administration, I am of the opinion that power to continue or to start a disciplinary proceeding after retirement may be necessary in certain cases. By itself the power is not arbitrary. It has a rational basis. But the power must be exercised, within a reasonable period and consistent with justice and public interest. In Mohambhai v.Y.B. Zala 1980(1)SerL&R324: Gujarat High Court held that starting of a departmental enquiry 11/2 years after the incident, was violative of natural justice. The Court held that it was too much to expect that delinquent would be able to remember and narrate the old incident. We have here the lapse of more than 20 years. If Rule 9 is to be saved from the attack of arbitrariness it must be read in a reasonable and

just manner. A guideline is available in Rule 9(2)(b). A fresh inquiry cannot be started 'in respect of any event which took place more than 4 years before such institution'. This statutory limitation embodies sound principle of equity and justice. It also recognises the principle of finality and repose. I do not find any difference in principle from the point of view of public interest,' in continuation of pending proceeding and starting afresh proceeding'. I, therefore, hold that in case of an event more than four years old on the date of retirement, a department proceeding cannot be continued after retirement under Rule 9(2) of the Pension Rules, 1972. It is well settled that requirement of natural justice can be read in a Rule even if the Rule is silent about it, particularly in a Rule concerning quasi judicial proceeding. In this view of the matter I hold that the departmental proceeding, if any, pending against the petitioner after 30.3.1975 is bad in law. The same is hereby set aside".

The above ruling of the Hon'ble High Court of Delhi has been followed by the Tribunal in O.A. 1065/2002 in D.N. Vohra v. Union of India, decided on 31.10.2003 as stated in Smt. Santosh Verma Vs. The Commissioner, Kendriya Vidyalaya Sangathan and Ors. O.A. No. 2469 of 2003 Decided On: 18.05.2004 [2005(1)SLJ383(CAT)]

19. What is the impact of minor penalty proceedings on pension?

There was considerable ambiguity in the area for some time. Presently, based on the decision of the Hon'ble Central Administrative Tribunal Principal Bench. Delhi in OA no 2068 of 2002 (R Sagar, NOIDA-UP Vs Union of India) it has been held vide DoP&T OM No, No.110/9/2003- AVD-I – 1 dated 13 April 2009 that minor penalty cannot have any effect on Pension. Accordingly, all the disciplinary authorities are required to complete the proceedings for minor penalty before the retirement of the delinquent.

20. Are any specific forms prescribed for the proceedings under Rule 9 of the Pension Rules?

Forms prescribed for the purpose are annexed to this chapter.

STANDARD FORM OF SANCTION UNDER Rule 9 OF THE CENTRAL CIVIL SERVICES (PENSION) RULES, 1972

No.....
Government of India
Ministry/Department
of.....

ORDER

Dated
the.....

WHEREAS it has been made to appear that Shri.....while serving as.....in the Ministry/Department.....from.....to.....was (here specify briefly the imputations of misconduct or misbehavior in respect of which it is proposed to institute departmental proceedings):

NOW, THEREFORE, in exercise of the powers conferred on him by sub-clause (i) of Clause (b) of sub-rule (2) of Rule 9 of the Central Civil Services (Pension) Rules, 1972, the President hereby accords sanction to the departmental proceedings against the said Shri .....

The President further directs that the said departmental proceedings shall be conducted in accordance with the procedure laid down in Rules 14 and 15 of the CCS (CCA) Rules, 1965, by .....(here specify the authority by whom the departmental proceedings should be conducted) at ..... (here specify the place at which the departmental proceedings would be conducted).

By order and in the name of the President

Name and designation of the competent authority*

Footnote ; * - To be signed by an officer in the appropriate Ministry/Department authorized under Article 77 (2) of the Constitution to authenticate orders on behalf of the President.

No.
Copy forwarded to Shri.....
Copy also forwarded to Shri.....

II

STANDARD FORM OF CHARGE-SHEET FOR PROCEEDINGS UNDER RULE 9 OF THE CENTRAL CIVIL SERVICES (PENSION) RULES, 1972

	No..... Government of India Ministry/Department of.....

MEMORANDUM

	Dated the.....

In pursuance of the sanction accorded by the President under Rule 9 of the Central Civil Services (Pension) Rules, 1972, for instituting departmental proceedings against Shri....., vide Ministry/Department of.....Order No....., dated,.....it is proposed to hold an inquiry against the said Shri..... in accordance with the procedure laid down in Rules 14 and 15 of the CCS (CCA) Rules, 1965. The enquiry shall be conducted by.....(here specify the authority by whom the departmental proceedings are to be conducted in accordance with the Presidential sanction) at ..... (here specify the name of the place where proceedings are to be conducted).

2. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexures III and IV).

3. Shri.....is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

4. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

5. Shri.....is further informed that if he does not submit his written statement of defence on or before the date specified in para. 3 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rules 14 and 15 of the CCS (CCA) Rules, 1965, or the orders/directions issued in pursuance of the said Rules the inquiring may hold the inquiry against him *ex parte.*

6. The receipt of this Memorandum may be acknowledged.

By order and in the name of the President

Name and designation of competent authority*

Footnote ; * - To be signed by an officer in the appropriate Ministry/Department authorized under Article 77 (2) of the Constitution to authenticate orders on behalf of the President.

To

Shri.....
.....

ANNEXURE - I

Statement of articles of charge framed against Shri.....(names of the retired Government servant) formerly.....

Article - I

That the said Shri.....while functioning as.....during the period.....

Article - II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri.....

Article - III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri.....

ANNEXURE - II

Statement of imputations of misconduct or misbehaviour in support of the articles of charge framed against Shri..... (name of the retired Government servant) formerly.....

Article - I
Article - II
Article - III

ANNEXURE - III

List of documents by which the articles of charge framed against Shri.....(name of retired Government servant) formerly.....are proposed to be sustained.

ANNEXURE - IV

List of Witnesses by whom the articles of charge framed against Shri..... (name of the retired Government servant) formerly.....are proposed to be sustained.

CHAPTER - 22

COMMON PROCEEDINGS

1. What is 'common proceedings'?

Common proceedings is the process through which disciplinary action is conducted simultaneously against two or more Government servants in respect of the misconduct committed by them in a single transaction. This is provided under Rule 18 of CCA Rules.

For example, if there were a group of employees who were preferring bogus bills towards monthly conveyance allowances in respect of persons who were either not claiming it or were not entitled for it and the same was being passed with the connivance of the staff and officers of the Accounts branch, it would be desirable to initiate a common proceedings rather than initiating a number of proceedings.

2. What are the circumstances under which Common proceedings are conducted?

For conduct of common proceedings, all the employees concerned must be amenable to CCA Rules. The proceedings must be based on a single transaction in which all the delinquent employees must have contributed/participated.

It would be advantageous if all the delinquent employees are under the disciplinary powers of the same authority.

3. Who can conduct common proceedings?

As per Rule 18, common proceedings may be initiated either by President or the authority that can impose the penalty of dismissal from service on all the delinquent employees.

4. What can be done, if there is no authority that can impose dismissal on all the delinquent employees?

Note under Rule 18(1) provides that **"***If the authorities competent to impose the penalty of dismissal on such Government servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others."*

5. What is the procedure for conducting common proceedings?

First step in the conduct of common proceedings is identification of the disciplinary authority for the purpose.

Second step is obtaining consent of other authorities who can impose the penalty of dismissal on other employees.

Thereafter, orders are to be issued nominating the identified disciplinary authority. Subject to the provisions of sub-rule (4) of Rule 12, the above order should also provide for the following:

(a) the penalties specified in Rule 11 which such disciplinary authority shall be competent to impose;

(b) whether the procedure laid down in Rule 14 and 15 or Rule 16 shall be followed in the proceeding.

Once the disciplinary authority is nominated, the procedure is the same as in any other case of disciplinary proceedings.

6. What are advantages of conducting Common Proceedings?

Following are some of the advantages of common proceedings:

(a) Common proceedings facilitate speedy inquiry. For example, witness is to depose only once. (Although cross examination may be done as many times as there are delinquents, total time consumed in cross examination will also be less than the sum total of all the cross examination if they were to be done independently)

(b) Common Proceedings help to avoid contradictory findings by different Inquiring Authorities

(c) Further, it enables the disciplinary authority and Inquiring Authority to have an overview of the entire transaction and correct perspective of the case

(d) Most importantly, penalties can be imposed equitably.

7. What are the precautions to be observed while resorting to Common Proceedings?

As the number of delinquent employees is large, there is a possibility of one or the other seeking adjournment or absenting. Naturally the Inquiring Authority shall not resort to ex-parte inquiry immediately when a delinquent is absent. Thus the scope for delay is inbuilt in common proceedings.

8. What is the limitation of common proceedings i.e. when it should not be resorted to?

Based on the procedure adopted in criminal cases, MHA has directed vide its letter No. 6/98/63-AVD dated 13th June 1963, when two employees complain against each other, common proceedings should be avoided.

It is however desirable that both the inquiries should proceed almost simultaneously to avoid dissimilar appreciation of same evidence and conflicting findings.

CHAPTER -23

BORROWED AND LENT OFFICERS

1. What are the powers of an authority to deal with the misconduct committed by an employee who has been borrowed from another organization?

Borrowing authority shall have powers of Appointing Authority for the purpose of placing the delinquent employee under suspension. The details of the case shall be intimated to the lending authority.

2. Can the borrowing authority initiate disciplinary proceedings?

Borrowing authority can initiate disciplinary proceedings. But the powers for imposition of penalty depend upon the circumstances of the case.

3. What are the provisions regarding imposition of penalty in respect of a Government servant lent by one department to another?

As stated above, the borrowing authority can initiate disciplinary proceedings against the borrowed official.

If at the end of the proceedings, it is felt appropriate to impose a minor penalty, the borrowing authority may do so after consulting lending department. In case there is difference of opinion between the two departments, the employee shall be reverted back to the parent department.

If on conclusion of the proceedings, the borrowing authority is of the opinion that a major penalty needs to be imposed, the employee concerned will be repatriated to the parent department and the records of the case will be transmitted to the parent department.

4. Is the disciplinary authority in the parent department bound by the findings in the disciplinary proceedings conducted in the borrowing department?

No. Explanation under Rule 20 of the CCA Rules clarifies that the disciplinary authority is empowered to hold further inquiry as it may deem necessary.

5. Briefly, what are the powers of the borrowing and lending authorities?

Powers of the borrowing authority may be summed up as under:

(a) It can suspend – but should report the matter to parent department

(b) It can initiate disciplinary proceedings

(c) It can impose minor penalty subject to consent given by parent department

(d) It will have to repatriate the employee if it is of opinion that major penalty is required to be imposed.

(e) Findings of the enquiry conducted by borrowing department are not binding on lending department.

Lending authority is at liberty to conduct further inquiry as deemed necessary.

CHAPTER – 24

REPORT OF INQUIRING AUTHORITY

1. What is the purpose of the Inquiry Report?

Purpose of the Inquiry Report is to analyse the evidence received in the course of the inquiry and the submissions made by the PO and the CO through their respective briefs and give a finding as to whether the charges are proved.

2. What are the material based on which the Inquiry Report is made?

Input for the Inquiry Report is obtained from the following:

(a) Charge sheet

(b) Documents submitted in the course of the inquiry (Listed documents as well as additional documents demanded by the Charged Officer)

(c) Statements of the witnesses during Examination in Chief, Cross Examination and Re-examination

(d) Statement of defence given by the Charged Officer under Rule 14(4) of the CCA Rules or corresponding rule under which the inquiry is being held

(e) Statement of defence given by the Charged Officer in response to the question under Rule 14(18) of the CCA Rules or corresponding rule under which the inquiry is being held

(f) Submissions by the Presenting Officer and the Charged Officer including written brief, if any, under Rule 14(19) of the CCA Rules or corresponding rule under which the inquiry is being held

While the core material for the Inquiry Report would be available in the above documents, Daily Order Sheets and the orders passed during the inquiry may also supply useful material in answering allegations of inadequate opportunity if any raised by the Charged Officer.

3. What are the precautions to be observed by the IO in preparing the report?

Inquiring Authority should take care of the following while preparing the report:

(a) The authority should confine to stating as to whether the charges have been proved or otherwise. Any mention by the Inquiring Authority regarding the quantum of penalty may raise serious doubts about its neutrality. The following observation by the Hon'ble Supreme Court in the

case of State of Uttaranchal and Ors. Vs. Kharak Singh [JT2008(9)SC205, (2008)8SCC236, 2009(1)SLJ375(SC)] is relevant in this connection:

> *13. Another infirmity in the report of the enquiry officer is that he concluded the enquiry holding that all the charges have been proved and he recommended for dismissal of the delinquent from service. The last paragraph of his report dated 16.11.1985 reads as under :*
>
> > *During the course of above inquiry, such facts have come into light from which it is proved that the employee who has doubtful character and does not obey the order, does not have the right to continue in the government service and it is recommended to dismiss him from the service with immediate effect.*
> >
> > *(emphasis supplied)*
>
> *Though there is no specific bar in offering views by the enquiry officer, in the case on hand, the enquiry officer exceeded his limit by saying that the officer has no right to continue in the government service and he has to be dismissed from service with immediate effect. As pointed out above, awarding appropriate punishment is the exclusive jurisdiction of the punishing /disciplinary authority and it depends upon the nature and gravity of the proved charge/charges and other attended circumstances. It is clear from the materials, the officer, who inspected and noted the shortfall of trees, himself conducted the enquiry, arrived at a conclusion holding the charges proved and also strongly recommended severe punishment of dismissal from service. The entire action and the course adopted by the enquiry officer cannot be accepted and is contrary to the well-known principles enunciated by this Court.*

(b) It must be ensured that all the findings and conclusions in the report are based on evidence produced during the inquiry

(c) Only on the material made available to the Charged Officer and in respect of which opportunity was provided for controverting the same can be relied upon for drawing conclusions

(d) Inquiring Authority should ensure not to import its personal knowledge in preparing the report

4. What is meant by "the charge is partially proved"?

A charge is supposed to contain a single omission or commission on the part of the Charged Officer such as the following:

(a) The charged officer had filed a false claim

(b) The charged officer had abused his official position by showing a favour to a relative

(c) The charged officer had violated a specific rule in the purchase code.

In the above kind of single dimensional charge, the findings should be either that the charge was proved or not proved. Although the charge at (b) above, has two parts viz. abusing the position and showing a favour to relative, the two are inextricably linked that the proof of one amounts to proof of another. On the contrary, at times, a charge may contain more than one element such as the following:

(a) The charged officer had failed to comply with the provisions of the purchase code and thereby caused loss to the state.

(b) The charged officer had submitted a misleading information and thereby shown favour to a particular supplier.

(c) The charged officer had manipulated the marks obtained by seven ineligible candidates and passed them in the departmental examination

In these types of charges, a part of the charge may be proved. For example, violation of the provisions of the purchase code may be proved and the loss to the state may not be proved. Alternatively, no evidence might have been led about the marks obtained by two of the seven candidates. Under such circumstances the Inquiry Authority may have to state that the charge is partially proved.

Under such a contingency, the Inquiry Authority should mention explicitly as to which part of the charge is proved and which part is not proved.

5. What should the Inquiry Authority do if the inquiry establishes a charge other than the one mentioned in the Charge Sheet?

It is the statutory responsibility of the Inquiring Authority to give its finding on any article of charge different from the original article of charge if the same is established in the course of the inquiry. This is subject to the condition that the Charged Officer had an opportunity of defending himself/herself against such a charge.

In this connection Explanation under Rule 14(23) of the CCA Rules provides as under:

> *"EXPLANATION- If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge:*
>
> *Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge."*

6. What should be the format of the Report?

Rule 14(23) of the CCS (CCA) Rules broadly indicates the content of the Inquiry Report as under:

> *After the conclusion of the inquiry, a report shall be prepared and it shall contain-*
>
> *(a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;*
> *(b) the defence of the Government servant in respect of each article of charge;*
> *(c) an assessment of the evidence in respect of each article of charge;*
> *(d) the findings on each article of charge and the reasons therefor.*

Apart from the above, there is no statutory format for the Inquiry Report. However, the following format may be suggested based on para 26.4 (wrongly mentioned as 26) of Chapter XI of the Vigilance Manual Volume I (Fifth Edition 1991):

(a) an introductory paragraph in which reference will be made to the appointment of the Inquiring Authority and the dates on which and the places where the hearings were held;

(b) charges that were framed;

(c) charges which were admitted or dropped or not pressed, if any;

(d) charges that were actually enquired into;

(e) brief statement of facts and documents which have been admitted;

(f) brief statement of the case of the disciplinary authority in respect of the charges enquired into;

(g) brief statement of the defence;

(h) points for determination;

(i) assessment of the evidence in respect of each point set out for determination and finding thereon;

(j) finding on each article of charge;

7. What other documents are to be sent along with the report?

Rule 14(23) (ii) of the CCS (CCA) Rules provides for submission of the following by the Inquiring Authority:

The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include :-

(a) the report prepared by it under clause (i).

(b) the written statement of defence, if any, submitted by the Government servant;

(c) the oral and documentary evidence produced in the course of the inquiry;

(d) written briefs, if any, filed by the Presenting Officer or the Government servant or both during the course of the inquiry; and

(e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

The above mandatory requirement may be elaborated as under.

Separate folders containing each of the following are required to be sent along with the Inquiry Report:-

(a) Documents produced in the course of inquiry

(i) Documents produced on behalf of the Disciplinary Authority
(ii) Documents produced on behalf of the Charged Officer

(b) Statements of witnesses by way Examination in Chief, Cross Examination and Re-examination in the order in which the witnesses were examined

(c) Daily Order Sheets relating to the Inquiry

(g) Written Statements of defence made under Rule 14(4) and 14(16) of the CCA Rules or corresponding rule under which the inquiry was held

(h) Submissions by the Presenting Officer and the Charged Officer including written brief, if any, under Rule 14(19) of the CCA Rules or corresponding rule under which the inquiry was held

(d) Orders passed by the inquiry Authority and the Disciplinary Authority in the course of inquiry; the following, for example:

(i) order relating to allowing or rejecting the request by charged officer seeking additional documents for defence
(ii) order relating to request for appointment of a Legal Practioner as defence Assistant
(iii) order on the request of the Charged Officer for change of Inquiring Authority, etc.

(e) Correspondence entered into during the inquiry

8. How does the Inquiring Authority assess evidence and draw conclusions?

This is covered under the separate chapter "Evaluation of Evidence"

9. To whom is the Inquiry Report sent?

Inquiry Report is sent to the Disciplinary Authority. It must be clearly noted that the Inquiring Authority should not send copy of the report to the Charged Officer.

However, in respect of the inquires conducted by the Commissioners of Departmental Inquiry nominated by the Central Vigilance Commission, the report, together with the record of the inquiry including the exhibits, will be forwarded by the Commissioner for Departmental Inquiries to the Central Vigilance Commission with spare copies of the report for the above as provided under para 26.8 of Chapter XI of the Vigilance Manual Volume I (Fifth Edition 1991).

10. What are the powers of the Inquiring Authority regarding recalling and modifying the Inquiry Report?

As per para 26.7 of the Chapter XI of the Vigilance Manual Volume I (Fifth Edition 199), extracted hereunder, the inquiring Authority becomes a functus officio after signing the report.

> *26.7 The Inquiry Officer after signing the report becomes functus officio and cannot thereafter make any modification in the report.*

Needless to add that the Disciplinary Authority, on examination of the Inquiry Report is empowered to remit the case back to the Inquiring Authority for further Inquiry. In such an eventuality, the Inquiring Authority is duty bound to comply with the instructions of the Disciplinary Authority. This aspect is discussed in a subsequent chapter

11. How many copies of the Inquiry Report are to be sent?

Although the CCA Rules are silent on this aspect, Para 26.6 of the Chapter XI of the Vigilance Manual Volume I (Fifth Edition 1991) provides as under:

> 26.6 The Inquiry Officer will forward to the disciplinary authority his report together with the record of the enquiry including the exhibits and spare copies of the report as follows:-
>
> i) as many copies as the number of delinquents;
>
> ii) one copy for the Special Police Establishment in cases investigated by them.

Further, para 26.8 of Chapter XI of the Vigilance Manual Volume I (Fifth Edition 1991) provides that in all cases in which the inquiry has been held by a Commissioner for Departmental Inquiries, the report, together with the record of the inquiry including the exhibits, will be forwarded by the Commissioner for Departmental Inquiries to the Central Vigilance Commission with spare copies of the report for the above.

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CHAPTER – 25

ACTION ON INQUIRY REPORT

1. What are the basic questions to be considered by the Disciplinary Authority on the Inquiry Report?

The Disciplinary Authority, on receipt of the Inquiry Report is to examine the report in the following directions:

(a) Whether the inquiry has been conducted in accordance with the statutory provisions as well as the Principles of Natural Justice by providing reasonable opportunity to the delinquent?

(b) Whether the findings in the Inquiry Report are acceptable?

It may be seen from the above that the first issue for consideration is regarding the procedural propriety of the inquiry conducted by the Inquiring Authority and the second question is about the correctness of the conclusions of the above Authority

2. How far the findings of the Inquiring Authority are binding on the Disciplinary Authority?

Findings of the Inquiring Authority are not binding on the Disciplinary Authority, who is at liberty to disagree with the same by recording reasons.

3. Can the Disciplinary Authority order for a fresh Inquiry if it is not satisfied with the Inquiry Report received by it?

Under Rule 15(1) of the CCA Rules, Disciplinary Authority is empowered to remit the case to the Inquiring Authority for further inquiry. Use of the word *'further"* implies that the earlier inquiry cannot be dumped for good and a fresh inquiry be conducted. Besides, the phrase used is "the Inquiring Authority" and not "an Inquiring Authority'. This implies that the further inquiry is to be held by the same Inquiring Authority who held the earlier inquiry. Of course, this is without prejudice to the powers of the Disciplinary Authority to appoint or re-appoint Inquiring Authority.

4. Can the disciplinary Authority remit the case to a new Inquiring Authority if it is not satisfied with the manner in which the Inquiring Authority had conducted the inquiry in the first instance?

As mentioned above, the phrase used in Rule 15(1) is "the Inquiring Authority" and not "an Inquiring Authority'. This implies that the further inquiry is to be held by the same Inquiring Authority who held the earlier inquiry. Of course this is without

prejudice to the powers of the Disciplinary Authority to appoint Inquiring Authority which should include powers to replace it as well.

5. Can the Disciplinary Authority order for a fresh inquiry if it is not satisfied with the findings by the Inquiring Authority?

In the case of K R Deb Vs. Collector Of Central Excise [1971 AIR 1447, 1971 SCR 375] facts were as under:

> *The appellant was a sub-Inspector of Central Excise. A departmental inquiry was held against him in respect of a charge of misappropriation of Government money. The Inquiry Officer exonerated him. The Collector Central Excise, ordered another Inquiry Officer to make a report after taking further evidence. The second Inquiry Officer at first exonerated the appellant but later, after taking some more evidence as directed by the Collector, reported that although the charge against the appellant was not proved his conduct may not be above board. Dissatisfied with the report the Collector ordered a fresh inquiry to be held by a third officer. This time a verdict of guilty was given and the appellant was dismissed. The appellant's writ petition in the Court of the Judicial Commissioner Tripura having failed he appealed to the Supreme Court by special leave. The question for consideration was whether the multiple inquiries held against the appellant were in accordance with Rule 15 of the Classification and Control Rules. 1957,*

Hon'ble Supreme Court set aside the proceedings and the penalty order of dismissal holding that

> *Rule, 15 on the face of it really provides for one inquiry but it may be possible if in a particular case there has been no proper inquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in r. 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under r. 9. The rules do not contemplate an action such as taken by the Collector in appointing a third Inquiry Officer. It seems that the Collector instead of taking responsibility himself was determined to get some officer to report against the appellant. The procedure adopted was not only against the rules but also harassing to the appellant. In the result it must be held that no proper inquiry has been conducted in the case and, therefore, there has been a breach of Art. 311(2) of the Constitution. [380 E] Services (Classification, Control and Appeal) Rules, 1957. It was contended that rule 15 of the 'Classification and Control Rules did not contemplate successive inquiries, and at any rate, even if it contemplated, successive inquiries there was no provision for setting aside earlier inquiries without 'giving any reason*

whatsoever. It was further contended that the order dated February 13, 1962 was mala fide.

Rule 15(1) of the Classification and Control Rules reads as follows:

"(1) Without prejudice to the, provisions of; the Public Servants (Inquiry) Act, 1850, no order imposing on a Government servant any of the penalties specified in clauses (iv) 'to (vii) of rule 13 shall be passed except after an inquiry, held, as far as may be,2 in. manner hereinafter provided."

Clause (2) of. rule 15 provides for framing of charges and communication in writing to the 'government servant of these charges With the statement of .allegations on which they are based, and it also provides for a written statement of defence. Under cl. (3) the government servant is entitled to inspect and take extracts from such official records as he may specify, subject to certain exceptions.Under clause (4) on receipt of the written statement of defence the Disciplinary Authority may itself enquire into such. of thecharges as are not admitted, or if it considers it necessary so to do, appoint a Board of Inquiry or an Inquiring Officer for the purpose. Clause (7) provides that at the conclusion of the inquiry, the Inquiring Authority shall prepare a report of the inquiry, recording its findings on each of the charges together with reasons therefore. If in the opinion of such authority the proceedings of the inquiry establish charges different from those originally framed it may record findings on such charges provided that findings on such charges shall not be recorded unless the Government servant has admitted the facts constituting them or has bad an opportunity of defending himself against them. Under cl. (9) "the Disciplinary Authority shall, if it is not the Inquiring Authority, consider the record of the inquiry and record its findings on each charge." Clause (10) provides for issue of show-cause notice. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report- of, the Inquiring Officer or Officers does not appeal to the disciplinary, Authority-. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9. In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get" some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant Before the Judicial commissioner the point was put slightly differently and, it was urged that the proceedings showed that the Disciplinary Authority had made up its mind to dismiss the appellant. The Judicial Commissioner held that on the facts it could not be said that the Disciplinary Authority was prejudiced against the appellant. But it seems to us that on the material on record a suspicion does arise, that the Collector was determined to get some Inquiry Officer to report against the appellant. In the result we hold that no proper inquiry has

been con- ducted in the case and, therefore, there has been a breach of art. 311(2) of the Constitution. The appeal is accordingly allowed and the order dated June 4, 1962 quashed. and it is declared that the appellant should be treated as still continuing in service. He should be paid his pay and allowances for the period he has been out of office.

6. What are the illustrative circumstances when the cases may be remitted to the Inquiring Authority for Further inquiry?

Illustrative circumstances where the Disciplinary Authority may remit the case to the Inquiring Authority for further Inquiry are as under:

(a) Where the Inquiring Authority has failed to ask the mandatory question under Rule 14(18) of the CCA Rules or any other corresponding rule under which the inquiry was held

(b) Where the Inquiring Authority has disallowed the additional document or witness demanded by the Charged Officer and in the opinion of the Disciplinary Authority the disallowed document or witness is relevant for the purpose of defence

(c) Where the inquiry Authority has rejected the request for engaging a defence assistant from outstation and in the opinion of the Disciplinary Authority the request of the Charged Officer is justified

(d) Where the ex-parte proceedings were initiated due to absence of Charged Officer and later on when the Charged Officer was prevented from participating in further proceedings on the plea that ex-parte inquiry had commenced.

7. What is the procedure for making reference to the Union Public Service Commission?

This is being covered under a separate chapter

8. What is the Procedure for consultation with the Central Vigilance Commission before deciding upon the quantum of penalty?

Based on the recommendations of the Group of Ministers which considered the report of the Hota Committee, it has been decided to dispense with the second stage advice of CVC in respect of cases wherein consultation with UPSC is required. DoP&T OM No. No.372/19/2011-AVD-lll(Pt.1) dated 26 Sep 2011 refers. Presently second stage consultation with CVC is being done only in respect of cases where consultation with UPSC is not required as per extant rules/instructions.

9. What will happen in cases of incompatibility of the level of the Disciplinary Authority who had issued charge sheet and the kind of penalty proposed to be imposed?

Authority who issued charge sheet	Penalty proposed to be imposed	Authority who is to impose penalty
Authority competent to impose Major Penalty	Major Penalty	Authority competent to impose Major Penalty
Authority competent to impose Major Penalty	Minor Penalty	Authority competent to impose Major Penalty OM No. 6/26/60-Ests.(A) dated 18 Jun 1962
Authority who is competent to impose only Minor Penalty	Major Penalty	Authority competent to impose Major Penalty
Authority who is competent to impose only Minor Penalty	Minor Penalty	Authority who is competent to impose only Minor Penalty

10. If the Disciplinary Authority is of the opinion that no penalty is to be imposed on the Charged Officer, is it still required to pass an order to the effect?

Although Rule 15 of the CCA Rules mentions the passing of only the orders imposing penalty, it is desirable that the statutory proceedings are brought to a conclusion through a formal orders. This will go a long way in relieving the Charged Officer of the agony and trauma suffered since the issue of Charge Sheet.

It is significant to note that P&T Manual has a specific provision to the above effect

11. What is the procedure for forwarding copy of the Inquiry Report and other documents to the Charged Officer?

The following documents are to be made available to the Charged officer who may also be provided with an opportunity to make representation against the contents:

(a) Copy of the Inquiry Report

(b) Copy of note of disagreement, if any, of the Disciplinary Authority with the conclusions of the Inquiring Authority

(c) Advice of the CVC where applicable

12. What precaution is necessary while forwarding the Inquiry Report to the Charged Officer?

Rule 15(2) of the CCA Rules which provides for forwarding the copy of the Inquiry Report to the Charged Officer prescribes that the Disciplinary Authority should forward its own tentative reasons for disagreement if any. The use of the word tentative makes it clear that the Disciplinary Authority should keep an open mind. This attitude of the disciplinary authority should manifest in its communication as well. This aspect has been explicitly highlighted in the DoPT OM No. F.N0.11012/12/2010-Estt. (A) dated 12 November 2010 in the following words:

> *"All Ministries/Departments are therefore, requested to ensure that the communication forwarding 'the IO's report etc. does not contain phrases such as 'Article of charge is fully proved' or 'Article of charge is fully substantiated' which could be construed to mean that the disciplinary authority is biased even before considering the representation of the charged officer and this would be against the letter and spirit of the CCS (CCA) Rules, 1965."*

13. What is the time limit for passing of final order?

In this connection, Deptt. Of Personnel & Training OM No. 11012/21/98-Estt.(A) dated 11th November, 1998 OM Provides as under:

> *"In the OM No. 39/43/70-Estt. (A) dated 08.01.1971, it has been envisaged that it should normally be possible for the disciplinary authority to take a final decision on the enquiry report within a period of three months. In cases where it is felt that it is not possible to adhere to this time limit, a report may be submitted to the next higher authority indicating the additional period required and reasons for the same. It should also be ensured that cases involving consultation with the CVC and UPSC are disposed of as quickly as possible.*
>
> *2. Though no specific time limit has been prescribed in the above OM in respect of cases where consultation with CVC and UPSC is required, it is imperative that the time limit of three months prescribed for other cases should be adhered to in such cases after receipt of the advice of the UPSC.*

14. How to decide the quantum of penalty?

This aspect is being covered in a separate chapter

CHAPTER – 26

CONSULTATION WITH THE UPSC

1. What is the provision under which consultation with the UPSC is mandated?

Article 320(3) (c) of the Constitution of India provides as under:

> *320. Functions of the Public Service Commissions*
>
> > *(3) the Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted –*
> >
> > > *(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in the Civil capacity, including memorials or petitions relating to such matters*
>
> *and it shall be the duty of the Public Service Commission to advice on any matter so referred to them which the President, or, as the case may be the Governor of the State, may refer to them.*

Further, the first proviso there under empowers the President to make regulations to specify the matters in which it shall not be necessary to consult the Commission.

In exercise of the powers conferred by the proviso to clause (3) of Article 320 of the Constitution the President has notified the regulations known as Union Public Service Commission (Exemption from Consultation) regulations, 1958.

A copy of the above regulations is annexed at the end of this chapter for ease of reference. Regulation 5 of the above regulations relates to disciplinary cases.

It has been clarified in the CCA Rules that the above stated consultation applies to passing of orders in Appeal, Revision and Review as well. Proviso (i) to Rule 27 (2) 29(1) and proviso to Rule 29-A refer.

In addition to the above, first proviso to Rule 9(1) of the CCS (Pension) Rules 1972 provides that consultation with UPSC is mandatory in all cases of withholding or withdrawing of pension.

2. Based on the cumulative effect of the above stated provisions, what are the matters in which the UPSC is required to be consulted?

Firstly, it must be noted that the constitutional provision applies only to the persons serving the Government in the Civil capacity. Thus disciplinary cases of the persons paid from the Defence Service Estimates, including defence civilians, are outside the purview of the consultation with the UPSC. This applies to the post retirement

proceedings as well because the consultation in such proceedings is also based on the provisions of Article 320(3) (c) of the Constitution of India.

Among the persons serving the Government in the civil capacity, consultation with UPSC is necessary in respect of any order made by the President – orders imposing penalty, orders disposing off appeal, revision or review.

Needless to add the UPSC is to be consulted in post retirement proceedings as well.

3. What is the procedure for forwarding the cases to UPSC?

The cases are to be forwarded as per the proforma prescribed for the purpose – a copy of the proforma is attached at the section "*Standard Forms*".

The records as per the proforma are to be sent under the certificate by the Joint Secretary/Director/Deputy Secretary in charge of the subject in the Ministry/Department to the effect that the case is complete in all respect.

4. What is the level of the correspondence relating to consultation with UPSC?

or

5. What is the importance/seriousness of the certificate regarding the completeness of the records?

As per DoPT OM No. 39011/12/2010-Estt.(b) dated 14th September 2010, in case the UPSC is required to return the case due to any deficiency, UPSC may address a letter to the Secretary of the Department/Ministry. If it is found that the case has been forwarded in a casual manner, Secretary of the Department/Ministry may issue a written warning to the Joint Secretary/Director/Deputy Secretary concerned to be more careful in future. A second time default by the same officers shall invite minor penalty proceedings against them.

6. What is the time limit for forwarding the cases to UPSC?.

As per DoPT OM No. 39011/12/2009-Estt.(b) dated 10th May 2010, complete reference should reach UPSC at least six months before the retirement of the charged officer.

7. **What are the precautions to be observed in the matter of consultation with the UPSC?**

DO's and DONT's as available in the UPSC website is reproduced for ease of reference:

DO's and DONT's for the disciplinary cases being referred to the Commission

1. *The Ministries/Departments should forward the disciplinary case to the Commission in terms of DoP&T OM No.39011/12/2009-Estt.Bc dt.10.5.2010*

2. *The pro forma/check list must be signed by CVO/Joint Secretary to Govt of India.*

3. *The documents indicated in proforma/Checklist should be duly referenced with page number, folder name etc.*

4. *Any column of the proforma should not remain unfilled. Avoid use '___' or 'do' in the proforma, instead the column should be filled using the terms 'Not Applicable' or 'nil'.*

5. *The Ministry should forward the documents either in original or duly authenticated copy thereof. Photocopied documents should preferably be signed in blue ink to enable cross-checking of authentication .*

6. *The exihibits and all other documents should be legible.*

7. *If any document is in Regional language, its authenticated translation in English should be available.*

8. *The full form of abbreviations if any, should be mentioned. The abbreviated terms for designation of C.O and for technical terms should be avoided.*

9. *In case of retired C.O. the information like last pay drawn, monthly pension and gratuity must be mentioned. In case pension and/or gratuity is withheld, the same should be indicated.*

10. *If any clarifications on the issues/points are sought by the Commission, the DA should make point-wise clarification.*

11. *The group of posts (viz. A, B, C, D) of the C.O. should preferably be indicated in the first column of the proforma/checklist.*

12. *The statement of defence and reply to the charge sheet should not be inferred as the same document.*

13. *Final para-wise comments of the D.A. on the representation of the C.O. on I.O report should be indexed at one place.*

14. *The feeder grade and its scale of pay in respect of C.O. should be indicated.*

15. *Daily order sheets should be available for all dates of hearing.*

16. *The position of co-accused, if any, may be indicated in the letter or proforma/checklist.*

17. *In minor penalty cases, the relied upon documents referred in the statement of imputation should be available and properly referenced.*

18. *The Charge Sheet issued must contain all its part/annexures.*

19. *The records regarding proof of the delivery of the Charge Sheet to the C.O. must be available.*

20. *The column relating to general examination of the C.O. should clearly indicate the reference of related papers. In case, general examination is not done, it should specifically be mentioned.*

21. *In case of disagreement of DA with IO report, a note of disagreement has to be prepared by the DA and it should be forwarded to the CO. Only forwarding the advice of CVC alongwith IO report will not suffice.*

22. *The para-wise comments of the DA should address the points raised by the CO in his reply. The comments should not be in brief or general in nature.*

23. *In case of pension cut proposals, the approval of the President is necessary.*

24. *If a disciplinary case instituted under major penalty and deemed to have been continued once C.O. retires, the approval of President is required under relevant Pension Rules afresh.*

25. *The records of the case referred originally be sent to the Commission in Appeal/review/revision cases.*

CHAPTER – 27

QUANTUM OF PENALTY

1. Once misconduct has been established, what is the mechanism for deciding the quantum of penalty?

There are several statutory provisions and administrative instructions which lay down as to what constitutes a misconduct. For example, the provisions of the Conduct Rules lay omissions and commissions which constitute misconduct. Various DoPT OMs lay down several actions such as neglect of family, failure to vacate Government accommodation in time, etc. amount to misconduct.

One significant aspect of CCA Rules is that there is no statutory prescription of penalties vis-à-vis the misconduct. For example the IPC provides the maximum penalty that may be levied against each crime. Prevention of Corruption Act prescribes the minimum and maximum penalty against each crime dealt with therein. Against this background, the CCA Rules are conspicuously silent about the quantum of penalty that may be imposed for any misconduct. Rule 11 of the CCA Rules provides as under:

> *The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:-*

Thus the appropriateness and sufficiency of reasons for imposition of penalty has been left to the discretion of the authority concerned.

2. Are the CCA Rules and the instructions issued there under completely silent about the quantum of penalty?

Only indication about the quantum of penalty is available in the two provisos to Rule 11 in the following manner:

> *Provided that, in every case in which the charge of possession of assets disproportionate to known-source of income or the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (viii) or clause (ix) shall be imposed :*
>
> *Provided further that in any exceptional case and for special reasons recorded in writing, any other penalty may be imposed.*

Another exception where quantum of penalty has been suggested by the GoI instructions is Deptt. Of Personnel & Training OM No. 11012/7/91-Estt. (A) dated 19.05.1993 which provides inter-alia

"*The matter has been examined in consultation with the Ministry of Law and Justice and it has now been decided that wherever it is found that a Government servant, who was not qualified or eligible in terms of the recruitment rules etc, for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in service. If he is a probationer or a temporary Government servant, he should be discharged or his services should be terminated. If he has become a permanent Government servant, an inquiry as prescribed in Rule 14 of CCS (CCA) Rules, 1965 may be held and if the charges are proved, the Government servant should be removed or dismissed from service. In no circumstances should any other penalty be imposed.*

3. Such discharge, termination, removal or dismissal from service would, however, be without prejudice to the right of the Government to prosecute such Government servants."

[Although the above OM has not been modified, its contents need to be understood in the light of the Judgment of the Hon'ble Supreme Court in the case of R. Vishwanatha Pillai Vs. State of Kerala & Ors. DATE OF JUDGMENT: 07/01/2004 [2004 AIR 1469, 2004(1)SCR360 , 2004(2)SCC105 , 2004(1)SCALE285 , 2004(1)JT88] wherein dismissal of an IPS officer with 27 years of service without inquiry was upheld as the officer was guilty of producing a false caste certificate at the time of recruitment. It must also be noted that in the above case, the officer was provided an opportunity of countering the allegation during the inquiry regarding the veracity of the certificate produced by him]

Another area relating to quantum of penalty is as under:

By necessary implication, penalty of Recovery from pay mentioned in Rule 11(iii) can be imposed only in such cases where the pecuniary loss has been caused and the same is attributable to the charged officer.

3. What guidelines are available to the Disciplinary Authority in deciding the quantum of penalty?

The following guidelines provided by the Hon'ble Supreme Court penalty in the case of Regional Manager, U.P.S.R.T.C., Etawah and Ors. Vs. Hoti Lal and Anr. [AIR 2003 SC 1462, JT 2003 (2) SC 27, (2003) 3 SCC 605, [2003] 1 SCR 1019,] for the Tribunals and the High Court is relevant for the Disciplinary Authorities in deciding the quantum of

"11. It needs to be emphasized that the Court or Tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment does not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the

scope for interference is very limited and restricted to exceptional cases in the indicated circumstances. Unfortunately, in the present case as the quoted extracts of the High Court's order would go to show, no reasons whatsoever have been indicated as to why the punishment as considered disproportionate. Reasons are live links between the mind of the decision taken to the controversy of question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice. (See Alexander Machinery Dudley Ltd. v. Crabtree 1974 LCR 120. A mere statement that it is disproportionate would not suffice. ……. It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transaction or acts in a fiduciary capacity, highest degree of integrity and trust-worthiness is must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of learned Single Judge upholding order of dismissal.

12. The appeal is allowed."

4. Is it mandatory to award identical punishment for similar misconduct?

Every employee has a right against discrimination and arbitrariness. However, this cannot be construed to mean that the same penalty must be awarded for similar misconduct. Although the quantum of penalty is within the domain of the discretion of the Disciplinary Authority, selective treatment of employees has been frowned upon by the courts. In this regard, the following extract from the judgment of the Hon'ble Supreme Court in the case of Man Singh Vs State Of Haryana & Ors decided on 1 May, 2008

18. In view of the factual backdrop and the above-stated statement of HC Vijay Pal, we are of the opinion that the respondents cannot be permitted to resort to selective treatment to the appellant and HC Vijay Pal, who was involved in criminal case besides departmental proceedings. HC Vijay Pal has been exonerated by the appellate authority mainly on the ground of his acquittal in the criminal case, whereas in departmental proceedings he has been found guilty by the disciplinary authority and was awarded punishment for serious misconduct committed by him as police personnel.

19. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of

exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the Excise Staff of Andhra Pradesh for violating the Excise Prohibition Orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the Excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the Excise offence by him in the State of Andhra Pradesh. The order of the disciplinary authority would reveal that for the last about three decades the appellant has served the Police Department of Haryana in different capacity with unblemished record of service.

However, the above should not be construed to mean that there must be uniformity in the quantum of penalty. This may be evident from the following extract of the Hon'ble Supreme Court in Union territory of Dadra & Nagar Haveli Vs. Gulabhia M Lad decided on 28.4.2010:

"In a matter of imposition of punishment where joint disciplinary enquiry is held against more than one delinquent, the same or similarity of charges is not decisive but many factors as noticed above may be vital in decision making. A single distinguishing feature in the nature of duties or degree of responsibility may make difference insofar as award of punishment is concerned. To avoid multiplicity of proceedings and overlapping adducing of evidence, a joint enquiry may be conducted against all the delinquent officers but imposition of different punishment on proved charges may not be impermissible if the responsibilities and duties of the co-delinquents differ or where distinguishing features exist. In such a case, there would not be any question of selective or invidious discrimination."

5. Is it appropriate to take into consideration the past profile of the charged officer while deciding the quantum of penalty?

It has been clarified by the Government that it is not appropriate to bring in past bad records in deciding the penalty, unless it is made the subject matter of specific

charge of the charge-sheet itself. Copy of G.I.M.H.A., OM No. 134/20/68-AVD, dated the 28th August, 1968 is extracted hereunder"

> *A question has arisen whether past bad record of service of an officer can be taken into account in deciding the penalty to be imposed on the officer in disciplinary proceedings, and whether the fact that such record has been taken into account should be mentioned in the order imposing the penalty. This has been examined in consultation with the Ministry of Law. It is considered that if previous bad record, punishment etc., of an officer is proposed to be taken into consideration in determining the penalty to be imposed, it should be made a specific charge in the charge-sheet itself, otherwise any mention of the past bad record in the order of penalty unwittingly or in a routine manner, when this had not been mentioned in the charge-sheet, would vitiate the proceedings, and so should be eschewed.*

Needless to add, there can be no bar to taking into account the past good conduct of the charged officer and reducing the penalty.

6. Under what circumstances the quantum of penalty may be perceived as excessive and disproportionate?

Answer to this question depends upon the facts and circumstances of the case. However, the following observation of the Hon'ble Supreme Court in the case of Chairman cum Managing Director, Coal India Limited and Anr. Vs. Mukul Kumar Choudhuri and Ors. [AIR2010SC75, JT2009(11) SC472, (2009)15SCC620] will help in taking a view on the quantum of penalty:

> *26. The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's Rules and Regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to*

be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations. Ordinarily, we would have sent the matter back to the appropriate authority for reconsideration on the question of punishment but in the facts and circumstances of the present case, this exercise may not be proper. In our view, the demand of justice would be met if the Respondent No. 1 is denied back wages for the entire period by way of punishment for the proved misconduct of unauthorized absence for six months.

Similarly in the case of Shri Bhagwan Lal Arya Vs. Commissioner of Police Delhi and Ors. [AIR2004SC2131, JT2004(3)SC384, (2004)4SCC560, [2004]3SCR1, 2004(2)SLJ460(SC)] the Hon'ble Supreme Court substituted the penalty of dismissal for the misconduct of absence of 2 Months and 8 days stating

14. Thus, the present one is a case wherein we are satisfied that the punishment of removal from service imposed on the appellant is not only highly excessive and disproportionate but is also one which was not permissible to be imposed as per the Service Rules. Ordinarily we would have set aside the punishment and sent the matter back to the disciplinary authority for passing the order of punishment afresh in accordance with law and consistently with the principles laid down in the judgment. However, that would further lengthen the life of litigation. In view of the time already lost, we deem it proper to set aside the punishment of removal from service and instead direct the appellant to be reinstated in service subject to the condition that the period during which the appellant remained absent from duty and the period calculated upto the date on which the appellant reports back to duty pursuant to this judgment shall not be counted as a period spend on duty. The appellant shall not be entitled to any service benefits for this period. Looking at the nature of partial relief allowed hereby to the appellant, it is now not necessary to pass any order of punishment in the departmental proceedings in lieu of the punishment of removal from service which has been set aside. The appellant must report on duty within a period of six weeks from today to take benefit of this judgment.

7. What factors the Disciplinary may consider while deciding the quantum of penalty?

The following extract from the Judgment of the Hon'ble Supreme Court in the case of Union territory of Dadra & Nagar Haveli Vs. Gulabhia M Lad decided on 28.4.2010 indicates some of the factors relevant in this context:

The exercise of discretion in imposition of punishment by the Disciplinary Authority or Appellate Authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works.

While it is again reiterated that the quantum of penalty is within the domain of the discretionary power of the disciplinary authority who is under no obligation to take cognizance of any suggestions, experts on the subject consider the following factors to be relevant while considering the quantum of penalty:

(a) What is the impact of the misconduct on the values cherished by the organization? Does it amount to the negation of the basic values such as trust, faith, honesty and integrity?

(b) What is the impact of the misconduct on the image of the organization among the stakeholders? Is it likely to affect the credibility of the organization? Whether the stakeholders are likely to lose faith on the orgnisation? Will the punishment restore the confidence of the stakeholders?

(c) What will be impact of the penalty on the individual concerned? – does it amount to punishing or finishing?. Will the employee be a better person by imposing a moderate punishment? As the old saying goes - *Every saint has a past and every sinner has a future*. Viewed in this context, whether it is appropriate to give an opportunity to the erring official to mend rather than putting an end?

(d) What message the punishment will send to other members and stakeholders of the organization? Is it likely to embolden the employees to act in defiance of prescribed rules; alternatively will it scare the employees so that they will adopt safety first policy and avoid taking risk which is one of the important qualities required of a manager?

(e) Is it an isolated misconduct in what is otherwise an unblemished career?

(f) How similar instances of misconduct were dealt with in the past?

(g) How such instances are dealt with in sister organizations? – as may be ascertained from CVC Reports, Vigilance magazines, etc.

(h) Whether there is any evidence of remorse or repentance on the part of the employee? For example whether the charged officer had admitted the charges at the earliest opportunity or kept on doggedly defending the misconduct?

(i) Whether the proposed penalty will serve public interest?

8. When would it be appropriate to impose the extreme penalty of dismissal or removal from service?

As pointed out by the Hota Committee, as per the **Notification dated 11 October 2000** of the **Department of Personnel and Training, Government of India** the penalty of dismissal or removal from service is mandatory in Disciplinary Inquiry involving lack of integrity or corrupt practice.

9. What should be the guiding principles in determining the quantum of penalty?

The following extract from the concluding portion of the Hota Committee Report may be taken as a guiding principle in deciding the quantum of penalty:

> *We may like to go on record that one of the purposes of any punitive action against a Government Servant is to vindicate the public policy that misconduct would be penalized and, in case of grave misconduct involving lack of integrity, the appropriate penalty will be removal or dismissal from service. Whereas we are aware of the need for different penalties in the Rule Book classified as major and minor penalties, it will be difficult to recommend any precise penalty for any specific misconduct. This is because each case of Disciplinary Inquiry is based on its own facts. We, however, reiterate that the categories of the Government Servants we have dealt with in this Report constitute a major segment of the intelligentsia of the country. Authorities on Public Administration and eminent Civil Servants are of the view that such Government Servants cannot be expected to be fully committed to the task of nation-building if their self esteem is corroded by stultifying rules, draconian procedures, demoralizing searches without meaningful seizure, undeserving sanction for prosecution or disproportionate punishments and deliberate humiliation. To put it briefly, for Government Servants to work with full sense of dedication, checks and balances must be built into the Government machinery and a just Political Executive, which is not only fair but is also perceived to be fair, is a vital requirement for a Republic where the Rule of Law is meant to be supreme.*
>
> *141. In the ultimate analysis, by faith and fairness alone can the foundations of a fully-dedicated public service be built and such a service will help make India a major player in the world.*

CHAPTER – 28

SPEAKING ORDERS

1. What are the main precautions to be observed while drafting penalty orders?

While drafting penalty orders it must be ensured that the final orders are speaking orders and are free from ambiguity or vagueness.

2. What is a speaking order?

Speaking order may be defined as an order which contains not only the conclusions and directions but also the reasons that have led to the conclusions.

It must not be confused with "*oral orders*" or "*verbal directions*".

Normally, courts used to reserve judgments when the arguments are concluded. Judgments will be delivered after some time lag because the court has to evaluate the evidence received and the submissions made by the parties. Contrary to this, the court may dictate orders in the court immediately on hearing the parties. Such orders are known as "*Oral orders*". Although these are called Oral Orders, they are also reduced to writing and the copies of these orders are also supplied to the parties in due course of time.

The term "*Verbal instructions*" refers to the instructions issued by superior officers to their subordinates under urgent circumstances. CCS Conduct Rules 1964 requires that such instructions should be confirmed through written instructions as soon as possible.

3. What are the advantages of speaking orders?

- Disclosure guarantees consideration
- Introduces clarity
- Excludes or minimises arbitrariness
- Satisfaction of the party
- Enables appellate forum to exercise control

Travancore Rayons Vs Union of India
AIR 1971 SC 862

4. What are the instances in the course of disciplinary proceedings wherein speaking orders are to be issued?

Firstly it must be understood that the speaking orders is not confined to disciplinary proceedings. All orders having an impact on the employees are to be speaking orders. For example, rejection of the request of an employee seeking stepping up of pay on par with junior should be through speaking orders. Disposal of a representation against supersession in the matter of promotion should also be through speaking orders.

It needs no emphasis that orders passed in the course of disciplinary proceedings have a far reaching impact on the employee because they relate not only to career prospects and monetary issues but also have a bearing on the honour and reputation of the employee concerned. Thus there are all the more stronger reasons for passing reasoned orders while conducting disciplinary proceedings.

An illustrative and non-exhaustive list of instances when speaking orders are required to be issued in the course of disciplinary proceedings is as under:

- Deciding the request of the Charged officer on defence documents and witnesses
- Deciding on the request for change of Inquiring Authority
- Deciding on the request of the charged officer for engagement of legal practioner for the purpose of defence
- Deciding on the request of the charged officer for engagement of a defence Assistant from out station
- Deciding on the request for adjournment
- Disposal of the appeal or review of revision application.
- Appeal against suspension
- Appeal for enhancement of subsistence allowance
- Decision regarding the treatment of period of suspension

5. There are some orders which are based on subjective satisfaction of the disciplinary authority. Under such circumstances, what reason can be given in the order?

No doubt there are some areas where the decision is made based on the subjective satisfaction of the authority concerned as in the instances where the rule specifically and explicitly indicates in some areas that the authority may decide “having regard to the circumstances of the case. For example, the request for engagement of legal

practioner as defence assistant may be permitted by the Disciplinary Authority "*having regard to the circumstances of the case*". Rule 14(8)(a). Similarly, Rule 16(1) (b) provides that for imposing a minor penalty, the provisions of rule 14(3) to 14(23) may be followed if "t*he disciplinary authority is of the opinion that such inquiry is necessary."*

Even in areas of exercise of discretionary powers, the orders should indicate application of mind. Besides, although some of the powers appear purely discretionary, there are guidelines for exercise of such powers. For example, MHA, DP&AR OM. No. 11012/7/83-Estt (A) dated the 23rd July 1984 lays down a list of non-exhaustive list of circumstances wherein the discretion is to be exercised in favour of the delinquent employee. Decision making authority may consider stating that the delinquent official has not justified the engagement of legal practioner and that the special circumstances (comparable to those mentioned in the above OM) do not exist in the present case.

Two important factors in this regard are:

(a) There must be evidence of application of mind
(b) Referring to, if not reproducing in the order, the submissions of the applicant and the relevant rule position will normally be a clear indication of application of mind.

6. What are the essential ingredients of a speaking order?

Speaking order should necessarily contain the following:

(a) Context: The order should narrate the back ground of the case. As has been laid down in a catena of decisions, law is not to be applied in vacuum. The circumstances that have caused the issue of the orders have to be brought out clearly in the introductory portion of the order. For example, if there is representation about incorrect pay fixation, the speaking order disposing of the representation should narrate how the anomaly has crept in, etc.

(b) Contentions: Rival submissions, where applicable, must be brought out in the order. For example the evidence led by the presenting officer in support of the charges and by the charged officer for refuting the charges. Needless to add that there may be cases wherein submissions may be unilateral as is the case of stepping up of pay, etc. Even in the course of disciplinary proceedings, there may be some instances wherein the concept of *rival* submission may not apply as in the case of representation for change of Inquiring Authority or for engagement of legal practioner as defence assistant.

(c) Consideration: The order should explicitly evaluate the submissions made by the parties vis-à-vis each other and in the light of the relevant statutory provisions. Each submission by the parties must be considered with a view to decide about its acceptability or otherwise.

(d) Conclusions: Outcome of the consideration is the ultimate purpose of the order. It must be ensured that each conclusion arrived at in the order must rest on facts and law.

7. What is the pre-caution to be taken in the matter of specifying the penalty?

The penalty being imposed must be free from ambiguity and vagueness. Scope of penalty must be clearly brought out in the order without leaving any scope for interpretation or filling up the gap through arguments such as '*by necessary implication'*.

While there cannot be any confusion with regard to orders of Dismissal, removal from service and censure, care must be taken in the following types of penalties as shown against each:

(a) Withholding of promotion: such an order should clearly state the period for which promotion is withheld.

(b) Recovery from pay: This penalty can be imposed only when it has been established that the Government servant was guilty of negligence or breach of orders or rules which caused the loss. When ordering such recovery the disciplinary authority should clearly state as to how exactly the negligence was responsible for the loss. The order should also specify the following:

(i) Total amount to be recovered
(ii) number of installments
(iii) Amount to be recovered in each installment

(c) Withholding of increment – such orders should give the period for which increment is withheld and whether the withholding will have the effect of postponing future increments.

(d) Reduction to a lower stage in the time scale of pay. Orders of this kind should indicate the following:

(i) the date from which the order will take effect;
(ii) the stage in the time scale of pay in terms of rupees to which the pay of the Government servant is to be reduced;
(iii) the period, in terms of year and moths, for which the penalty will be operative;
(iv) Whether the Government servant will earn increments of pay during the period of such reduction; and
(v) Whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay.

(e) Reduction to a lower time scale of pay, grade, post or service: such an order should cover the following aspects:

(i) the lower time scale of pay, grade, post or service and stage of pay in the said lower time scale to which the Government servant is reduced;

(ii) the date from which the order will take effect;

(iii) where the penalty is imposed for a specified period, the period, in terms of years and months, for which the penalty will be operative;

(iv) if the penalty is imposed for an unspecified period directions regarding conditions of restoration to the grade or posts or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service.

8. What is the deficiency if the order is not a speaking one and what is its impact?

The following observations by the Apex Court in the case of Markand C. Gandhi Vs. Rohini M. Dandekar Civil Appeal No. 4168 of 2008 Decided On: 17.07.2008 highlights the inadequacy of non-speaking orders:

"4. The impugned order runs into 23 pages. Upto the middle of Page 10, the Committee has referred to cases of the parties; from middle of Page 10 to middle of Page 11, issues have been mentioned; from middle of Page 11 to the top of Page 22, the Committee has referred to the evidence, oral and documentary, adduced on behalf of the parties without discussing the same and recording any finding whatsoever in relation to the veracity or otherwise of the evidence; and thereafter disposed of the proceeding which may be usefully quoted hereunder: We have gone through the records. The issues were framed on 18-8-1990. Issue No. 1 relates to a threat given by the Respondent to the complainant on 8-6-1977. This issue is not related to the professional misconduct and in this regard the complainant has not submitted any documentary evidence to prove her stand. As far as the issue No. 2 is concerned, this is a very important issue. The complainant has submitted document in support of her contention and proved the issue. This fact cannot be denied by oral version, as there is documentary record. As far as the issue No. 3 is concerned, this is also proved by the complainant by her evidence. Issue No. 4 relates to the certificate issued by the Respondent. This has also been proved by the complainant by documentary proof which is on record. Likewise Issue No. 6 is also proved by documentary proof. Issues Nos. 6 to 7 relate to one Mr. Vora, architect and builder and Mr. B.S. Jain and the Respondent. The main issue in this controversy is issue No. 8 i.e., whether the Respondent is guilty of professional misconduct or other misconduct. In this respect it is the admitted position before the Committee that some documents were already on record and retained by the Respondent and the certificate issued by the Respondent with regard to the property in question. It is also

admitted position that in this matter a compromise letter was filed by the parties earlier. We have heard the arguments and we have also perused the documents. The complainant has proved her allegations made in the complaint against the Respondent. The allegations made are very serious. We are of the opinion that the Respondent has committed professional misconduct and thus we hold him guilty of professional misconduct and suspend him from practice as an advocate before any Court or authority in India for a period of five years and we also impose a cost of Rs. 5,000/- to be paid by him to the Bar Council of India which on deposit will go the Advocates Welfare Fund of the Bar Council of India. If the amount of cost is not paid within one month from the date of receipt of this order, the suspension will be extended for six months more.

5. From a bare perusal of the order, it would appear that, virtually, there is no discussion of oral or documentary evidence adduced by the parties. The Committee has not recorded any reason whatsoever for accepting or rejecting the evidence adduced on behalf of the parties and recorded finding in relation to the misconduct by a rule of thumb and not rule of law. Such an order is not expected from a Committee constituted by a statutory body like B.C.I.

6. We are clearly of the opinion that the finding in relation to misconduct being in colossal ignorance of the doctrine of audi alteram partem is arbitrary and consequently in infraction of the principle enshrined in Article 14 of the Constitution of India, which make the order wholly unwarranted and liable to be set aside. This case is a glaring example of complete betrayal of confidence reposed by the Legislature in such a body consisting exclusively of the members of legal profession which is considered to be one of the most noble profession if not the most.

7. Accordingly, the appeal is allowed, impugned order rendered by the Disciplinary Committee of the B.C.I, is set aside and the matter is remitted, for fresh consideration and decision on merits in accordance with law. Chairman of the B.C.I, will see that this case is not heard by the Disciplinary Committee which had disposed of the complaint by the impugned order and an altogether different Committee shall be constituted for dealing with this case.

CHAPTER – 29

APPEAL, REVISION AND REVIEW

1. What departmental remedies are available to the employee aggrieved by an order adversely affecting the career?

An employee aggrieved by an order adversely affecting the career has departmental remedies in the form of Appeal, Revision and Review.

As is well known, administrative orders are subject to judicial scrutiny as well. But generally, Courts and Tribunals will entertain the Writ or Application only if the employee satisfies the judicial forum that remedies available within the administrative machinery have been availed or could not be availed for valid reason.

2. What is the inter-se relationship between the above stated three departmental remedies?

Relative position of the three remedies may be briefly stated as under:

FACTOR	APPEAL	REVISION	REVIEW
By Whom	Appellate Authority	Includes Appellate Authy	President
How	On Appeal By The Individual	On Own Motion Or Other Wise	On Own Motion Or Other Wise
When	Within 45 Days – Authority May Condone	Any Time After Time For Appeal Is Over Or After Disposal Of Appeal	Any Time
Condition		Not Appealable Or No Appeal Made	New Material

Detailed discussion of these three remedies is available in respective questions hereunder.

3. Is the right of Appeal available against all orders with which the employee feels aggrieved?

No. Rule 22 and 23 of the CCA Rules provide what are the orders against which appeal lies and otherwise. The same is as under:

(a) As per Rule 22, no appeal lies against the following orders:

(a) any order made by the President;

(b) any order of an interlocutory nature or of the nature of a step-in-aid of the final disposal of a disciplinary proceeding, other than an order of suspension;

(c) any order passed by an inquiring authority in the course of an inquiry under Rule 14.

(b) Rule 23 of CCA Rules provides that subject to Rule 22, the following orders are appealable:

(i) an order of suspension made or deemed to have been made under rule 10;

(ii) an order imposing any of the penalties specified in rule 11, whether made by the disciplinary authority or by any appellate or revising authority;

(iii) an order enhancing any penalty, imposed under rule 11;

(iv) an order which-

(a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or by agreement; or

(b) interprets to his disadvantage the provisions of any such rule or agreement;

(v) an order-

(a) stopping him at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;

(b) reverting him while officiating in a higher service, grade or post, to a lower service, grade or post, otherwise than as a penalty;

(c) reducing or withholding the pension or denying the maximum pension admissible to him under the rules;

(d) determining the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof;

(e) determining his pay and allowances-

(i) for the period of suspension, or

(ii) for the period from the date of his dismissal, removal or compulsory retirement from service, or from the date of his reduction to a lower service, grade, post, time-scale or stage in a time-scale of pay, to the date of his reinstatement or restoration to his service, grade or post;

or

(f) determining whether or not the period from the date of his suspension or from the date of his dismissal, removal, compulsory retirement or reduction to a lower service, grade, post, time-scale of pay or stage in a time-scale of pay to the date of his reinstatement or restoration to his service, grade or post shall be treated as a period spent on duty for any purpose.

4. Who is the appellate authority?

Appellate authority in various cases has been mentioned in the Schedule to the CCA Rules. Besides, the same may be specified by a general or special order of the President.

In respect of cases not covered by the above, appellate authority has been prescribed under Rule 24 of the CCA Rules as under:

(i) where such Government servant is or was a member of a Central Service, Group 'A' or Group 'B' or holder of a Central Civil Post, Group 'A' or Group 'B' -

(a) to the appointing authority, where the order appealed against is made by an authority subordinate to it; or

(b) to the President where such order is made by any other authority;

(ii) where such Government servant is or was a member of a Central Civil Service, Group 'C' or Group 'D', or holder of a Central Civil Post, Group 'C' or Group 'D', to the authority to which the authority making the order appealed against is immediately subordinate

However, the above provision does not apply to appeals against an order passed in Common proceedings.

5. Who is the appellate authority in respect of orders passed in the Common proceedings?

In respect of an order in a common proceeding held under Rule 18 appeal shall lie to the authority to which the authority functioning as the disciplinary authority for the purpose of that proceeding is immediately subordinate:

However, if the President is the appellate authority in respect of a Government servant in terms of the general provisions mentioned above, the appeal shall lie to the President.

6. What happens if the authority that made the order appealed against is holding the position of the appellate authority - may be, due to subsequent promotion?

In such an eventuality, the appeal shall lie to the authority to which such person is immediately subordinate.

7. Is there any special provision relating to office bearers of the association who have been penalised due to association activities?

8. Rule 24(3) provides that a Government servant on whom a penalty has been imposed on account of his/her activities connected with the work as an office-bearer of an association, federation or union, participating in the Joint Consultation and Compulsory Arbitration Scheme, may prefer an appeal to the President, where no such appeal lies to him otherwise.

9. What is the time limit for preferring the appeal?

Rule 25 of CCA Rules prescribes a limitation period of 45 days for preferring appeal. This is to be counted from the date of delivery to the appellant, of the order appealed against. However, the appellate authority is empowered to entertain appeals filed beyond the above stated period, if it is satisfied about the cause of delay.

10. What is the form and content of appeal?

Rule 26 (1) and (2) provide as under:

> *Every person preferring an appeal shall do so separately and in his own name[* i.e. joint appeal is not allowed.*]*
>
> *The appeal shall be presented to the authority to whom the appeal lies, a copy being forwarded by the appellant to the authority which made the order appealed against. It shall contain all material statements and arguments on which the appellant relies, shall not contain any disrespectful or improper language, and shall be complete in itself.*

11. What is the role of the authority that has made the order appealed against?

Rule 26(3) provides as under:

> *The authority which made the order appealed against shall, on receipt of a copy of the appeal, forward the same with its comments thereon together with the relevant records to the appellate authority without any avoidable delay, and without waiting for any direction from the appellate authority.*

12. What is the general approach prescribed for disposing of appeals?

Rule 27 (1) and (2) of the CCA Rules provides an elaborate procedure for disposing of appeals against orders of suspension and orders imposing any of the penalties specified in Rule 11 of the CCA Rules.

As regards appeal against orders of other kind, Rule 27(3) states that *the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.*

13. What are the factors to be considered in dealing with the appeal relating to orders made under CCA Rules?

As regards the appeal against the orders of suspension the appellate authority is required to consider "*whether in the light of the provisions of rule 10 and having*

regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly."

As regards the appeal against orders imposing any of the penalties specified in Rule 11 of the CCA Rules, the appellate authority shall consider the following three aspects:

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

(b) *whether the findings of the disciplinary authority are warranted by the evidence on the record; and*

(c) *whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;*

14. Is it necessary to consult CVC at the time of disposal of Appeal?

Para 19 of Chapter XVII of the CVC Manual (1991 Ed) provides as under:

> *19. Consultation with the Central Vigilance Commission - In such cases where the UPSC is not to be consulted the cases at appeal/revision stage should be referred to the Central Vigilance Commission where the appellate/revising authorities propose to modify or set aside the penalty imposed in a case in which the Central Vigilance Commission was earlier consulted. It will not be necessary to consult the Central Vigilance Commission in cases, where the appellate/revising authority decides not to set aside or modify a penalty imposed by a disciplinary authority. Moreover, so long as the appellate/revising authority while modifying the penalty imposed by the disciplinary authority on the advice of the CVC, still remains within the parameter of the major or minor penalty, earlier advised by the Commission, there is no need to consult the Commission again, as such a modification does not have the effect of departing from their advice. The Commission should also be informed of the final outcome of all appellate/revision/review proceedings, if as a result of such proceedings, the penalties imposed on the earlier advice of the Commission are set aside or modified.*

The same procedure should apply for Revision and Review as well

15. What are the possible outcomes in the case of appeal against an order imposing penalty?

The appellate authority, on consideration of the appeal, shall either

(a) confirm, enhance, reduce, or set aside the penalty; or

(b) remit the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case

16. What are the pre-requisites to be complied with before enhancing the penalty?

If it is proposed to impose a major penalty by way of enhancement, and an inquiry under rule 14 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of rule 14:

In other cases relating to enhancement of penalty, a reasonable opportunity shall be given to the appellant of making a representation against the proposed penalty

17. Is it necessary to provide personal hearing while dealing with appeal?

As such CCA Rules do not provide for a personal hearing at the appeal stage. However, the issue was considered by the Government in the light of the recommendations of the Committee of the National Council (JCM) set up to review the CCS (CCA) Rules, 1965.

Accordingly, the Government has vide its [G.I, Deptt. of Personnel & Trg. OM No. 11012/20/85-Estt.(A) dated 28th October, 1985].has decided as under:

> *As Rule 27 of the CCA Rules does not preclude the grant of personal hearing in suitable cases, it has been decided that where the appeal is against an order imposing a major penalty and the appellant makes a specific request for a personal hearing the appellate authority may, after considering all relevant circumstances of the case, allow the appellant, at its discretion, the personal hearing.*

Subsequently, it has been decided vide [G.I.Deptt. of Personnel & Trg. OM No. 11012/2/91-Estt.(A) dated 23.04.91] to allow the appellant to take the assistance of a defence assistant, if a request is made to that effect.

> *The proposal was discussed in the meeting of the National Council (JCM) on 31.01.1991 and it has been decided that in all those cases where a personal hearing is allowed by the appellate authority in terms of OM dated 28.10.85, referred to above, the Government servant may be allowed to take the assistance of a defence assistant also, if a request is made to that effect.*

18. What is the manner of disposal of appeals in the cases wherein inquiry was dispensed with under Rule 19 (ii) of the CCA Rules?

As held by the Hon'ble Supreme Court in Tulsi Ram Patel case [AIR1985SC1416, (1985) 3 SCC398, [1985] Supp 2 SCR131, 1985 (2) SLJ145(SC)]

> *139. A government servant who has been dismissed, removed or reduced in rank, by applying to his case Clause (b) or an analogous provisions of a service rule is not wholly without a remedy. As pointed out earlier while dealing with the various service rules, he can claim in a departmental appeal or revision that an inquiry be held with respect to the charges on which the penalty of dismissal, removal or reduction in rank has been imposed upon him unless the same or a similar situation prevails at the time of hearing of the appeal or revision application. If the same situation is continuing or a similar situation arises, it would not then be reasonably practicable to hold an inquiry at the time of the hearing of the appeal or revision. Though in such a case as the government servant if dismissed or removed from service, is not continuing in service and if reduced in rank, is continuing in service with such reduced rank, no prejudice could be caused to the Government or the Department if the hearing of an appeal or revision application, as the case may be, is postponed for a reasonable time.*

Based on the above, the appellate authorities will have to hold an inquiry in such cases, if need be, by waiting for the situation to improve wherein the conduct of inquiry will be practicable.

19. Who is responsible for the implementation of the orders disposing of the appeal?

Rule 28, of the CCA Rules provides as under:

> *The authority which made the order appealed against shall give effect to the orders passed by the appellate authority.*

20. What remedies are available to the employee other than appeal?

Revision and review are two more remedies open to the employee. These are provided under Rule 29 and 29-A of the CCA Rules

21. What are the features of revision?

Following of the features of revision:

(a) Revision is permissible in respect of orders

  (i) from which appeal is allowed but was not made

(ii) no appeal is allowed

(b) Authorities mentioned in Rule 29 (1) can carry out revision

(c) Power of revision may be exercised either suo motu or otherwise.

(d) UPSC will have to be consulted where necessary

(e) Revision cannot be commenced until

(i) the expiry of the period of limitation prescribed for appeal or
(ii) the disposal of appeal where appeal has been preferred

(f) Possible outcomes of revision are the same as that of appeal i.e. penalty may be confirmed, modified etc,

(g) The same steps are to be followed before passing order in the case of revision i.e. providing reasonable opportunity before enhancement of penalty, etc.

22. Is there any time limit for revision?

Rule 29(1) (v) restricts the time for review in respect of Appellate Authority as six months from the date of the order proposed to be reviewed.

In respect of any other authority for whom the powers of revision are conferred by the general or special order of the President, time limit will be as mentioned in the above order:

23. What are the distinguishing features between review and revision?

While the authorities competent to conduct revision are mentioned in Rule 29, power of review has been vested only with the President under Rule 29-A

While revision can be carried out by on own motion or otherwise, there is a condition precedent for review viz. that it must be based on new material which could not be produced or was not available at the time of passing the order under review.

24. What is the nature of new material which justifies review?

Review will be justified only if the new material has the effect of changing the nature of the case.

25. What are the possible outcomes of review?

Rule 29A provides that under the conditions prescribed in Rule 29-A, the President may review any order. The scope of the power of review has not been elaborated. Hence it must be assumed hat President has full powers to pass appropriate orders in the matter. Proviso to Rule 29-A makes it amply clear that the power, of review includes the power of imposing and enhancing penalty subject to provision of reasonable opportunity.

CHAPTER - 30

ACTION ON RECEIPT OF COURT ORDERS

1. **What are the various court orders relevant to the context of disciplinary proceedings?**

   Government Servants are likely to seek judicial intervention for the following purposes in matters relating to disciplinary proceedings:

   (a) Revocation of suspension
   (b) Enhancement of subsistence allowance
   (c) Quashing of Charge Sheet
   (d) Stay of the inquiry
   (e) Setting aside the order of the Disciplinary Authority or Appellate Authority imposing penalty

2. **What action is required on the part of the Disciplinary Authority on receipt of court orders?**

   Disciplinary Authority should check if the order is an interim order or a final order in the judicial proceedings. If it is an interim order, it must be checked as to whether it is ex-parte interim order or otherwise.

   In case of ex-parte interim orders, effort must be made to move the court to place before it the stand of the disciplinary authority and get the interim orders vacated, where necessary.

   In all cases, legal advice must be obtained about further course of action open to the department.

   In case any appeal is to be filed, urgent action must be taken in that regard

   If there is a stay on the conduct of inquiry, the same must be complied with immediately; there is no bar, however to seek judicial remedy available under law.

3. **What is the time limit within which the court orders are to be implemented?**

Directions are to be implemented within the time limit stated in the judgment. If no time limit is mentioned in the order, the directions must be complied with as early as possible but within six months.

In case there is any difficulty in complying with the time limit, extension of time must be sought from the court.

4. **What action is to be taken by way of implementation of a judicial order setting aside a penalty?**

Normally, when a penalty is set aside, the clock is to be put back. i.e. the status quo ante imposition of the penalty is to be restored. Further, if the employee has suffered any adverse impact due to currency of penalty, the same has to be removed with ante date effect. However, the action to be taken by the disciplinary authority depends upon the nature of the penalty set aside as explained hereunder:

(a) If a censure is to be set aside, necessary entries are to be made in the service records of the individual

(b) While implementing the judicial order setting aside the penalty of recovery of pecuniary loss, recovery if in progress should be stopped forthwith; past recoveries made, if any, must be refunded to the government servant. in case the court has ordered the refund with interest if any, the same has to be calculated and refunded to the official.

(c) Withholding of promotion – in case the employee were due for promotion in the interim period and the same was denied because of the penalty order, promotion as due in the interim period must be granted with all consequential benefits such as pay fixation, grant of arrears of pay, etc.

(d) Withholding of increments – pay has to be revised by granting the increments on the due dates; arrears of salary admissible consequent to revision must be paid, together with interest if applicable.

(e) Reduction of pay to a lower stage- pay reduction has to be nullified; pay has to be regulated based on the pre-penalty scenario; arrears of salary admissible consequent to revision must be paid, together with interest if applicable.

(f) Reduction to a lower post or scale of pay or service. – pre-penalty scenario has to be restored and continued. Arrears of pay have to be disbursed to the employee together with interest if applicable.

(g) Compulsory retirement, Removal from service and dismissal- these three penalties are different from the others because, these penalties result in cessation of service of the charged officer. By way implementation of the judgment, the employee has to be reinstated in service, if he/she has not attained the age of superannuation. Interim period from the date of imposition of penalty to the reinstatement will have to be regulated based on CCA Rules 10 and FR 54(A).

(h) In addition to the above, in all cases where the penalty is set aside after the date of superannuation of the government servant, necessary revision of pension must be carried out.

(i) If the penalty of dismissal, removal from service or compulsory retirement is set aside retrospectively after the date of superannuation of the employee, the employee will be notionally re-instated in service and the service benefits

including notional promotion, notional pay fixation, grant of arrears of pay, revision of pension and pensioner benefits, etc. will have to be granted in terms of the judgment.

(j) It is not uncommon for the courts to order reinstatement subject to the condition that the employee will not be entitled to arrears of salary or will be entitled only to part of the arrears say -50% and that the service in the interim period will qualify for certain specific purposes only. Such judgments will have to be suitably implemented in respect of retired or serving employees.

5. W**hat are the two different kinds of grounds under which the penalty may be set aside?**

The above penalties may be set aside

(a) For non-compliance of the constitutional/statutory provisions or principles of natural justice.

(b) On merits i.e. the charges have not been proved or that the employee is free from guilt.

While setting aside the penalty, the courts may or may not give liberty to the disciplinary authority to proceed against the delinquent official.

6. **What will be the position of the employee from the date of dismissal, removal from service or compulsory service till the date of re-instatement?**

Intervening period i.e. the period from the date of dismissal, removal from service or compulsory retirement to re-instatement shall be treated as deemed suspension under Rule 10 (4) if the disciplinary authority decides to hold a further inquiry. Otherwise, the interim period will be treated as duty for all purposes under FR 54 - (A) (3)

7. **What are the two issues that call for determination on re-instatement of the employee consequent to the court orders?**

Following are the two issues which arise for determination on re-instatement of the employee:

(a) Treatment of the intervening period

(b) Pay and allowance for the period

It has been clarified vide Ministry of Finance OM No. 15(14(E0.IV (59) dated 25th May 1962 and 9th August 1962 that the above two issues are independent, except that the competent authority has no discretion to pay full pay and allowance when the period is not treated as duty.

8. **How will the intervening period be treated?**

If the setting aside of the penalty is on merit, the intervening period will be treated as duty for all purposes.

On the other hand, if the penalty is set aside for non-compliance of statutory provisions and the exoneration is not on merit, the intervening period shall not be treated as duty unless the competent authority directs that to be treated as duty for any specific purpose. FR54 –A (2) (ii) read with FR 54 (5) refers in this connection.

The competent authority may however allow the period to be treated as leave if the Government servant so desires.

9. **What will happen to the period of suspension immediately preceding the dismissal, removal from service or compulsory retirement?**

In case the penalty is set aside on merit, the period of suspension immediately preceding the penalty will also be treated as duty for all purposes and full back wages will be paid under FR 54 – A (3)..

Note: It is significant that in case of reinstatement consequent to the orders of the appellate authority, even in cases where full payment is made for the post penalty period, proviso to Rule 54(2) makes a separate provision in respect of the period of suspension immediately preceding the penalty, depending upon whether the proceedings were delayed due to reason directly attributable to the employee. However, in the case of reinstatement on account of merit by virtue of court orders, such a question is not raised. The competent authority may however allow the period to be treated as leave if the Government servant so desires under FR 54(5).

10. **What is the pay and allowances admissible in respect of the cases, where the setting aside the penalty is on account of technical reasons (i.e. for non-compliance of the statutory provisions)?**

Under such cases where the setting aside is not on merit, the Government servant is not entitled for full pay and allowances.

The competent authority will have to decide the pay and allowance admissible during the intervening period by issue of a notice indicating the proposed quantum and allowing time not exceeding 60 days for reply.

11. **What will be the situation if the employee was gainfully employed in the intervening period?**

Rule 54 – A (5) provides that the above stated payment shall be subject to adjustment towards the amount if any earned through an employment during the intervening period.

CHAPTER – 31

SCOPE OF JUDICIAL SCRUTINY

1. What is the scope of judicial intervention in the matter of disciplinary proceedings?

In matters relating to disciplinary proceedings, the Courts as well as the Administrative Tribunals carry out judicial review. They do not act like an appellate forum.

2. What is the difference between Judicial Review and Appeal?

Scope of Judicial Review is confined to testing the legality of the process and outcome. On the other hand, an appellate forum verifies the correctness of the decision appealed against.

In other words, Judicial Review pertains to the procedural issues while appeal relates to the substantive issues as well. Judicial Review is more about the method of arriving at a decision rather than the merit of the decision as such.

3. What is Wednesbury principle in relation to Judicial review of administrative Action?

As stated by the Hon'ble Supreme Court in Maharashtra Land Development Corporation and Ors. Vs. State of Maharashtra and Anr.[2010(11)SCALE675]

> *42. Being called upon to review this administrative action, we have examined as to whether the same amounts to irrational or disproportionate. The common yardstick to determine whether the act on the part of the Government violates established principles of administrative law has been the Wednesbury principle of unreasonableness, employed both by English and Indian Courts. The Wednesbury principle was enunciated by Lord Greene MR in Associated Provincial Picture Houses Limited v. Wednesbury Corporation reported at (1947) 2 All ER 680.*
>
> *To quote the learned Judge on the principle enunciated:*
>
> > *What then are those principles? They are well understood. They are principles which the court looks to in considering any question of discretion of this kind. The exercise of such discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters. Conversely, if the nature of the subject matter*

and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question; the authority must disregard those irrelevant collateral matters.

4. What is the scope of Judicial Review?

In Tata Cellular the Apex court indicated the scope of Judicial Review in the following terms:

"77. The duty of the court is to confine itself to the question of legality. Its concern should be :

1. Whether a decision-making authority exceeded its powers?

2. Committed an error of law,

3. committed a breach of the rules of natural justice,

4. reached a decision which no reasonable tribunal would have reached or,

5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decision- maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind28, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

Later, the Hon'ble Supreme Court delineated the scope of Judicial Review in the case of State of UP Vs. Johri Mal [(2004) 4 SCC 714] in the following terms"

The Scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi judicial or administrative. The power of judicial review is not intended to assume a supervisory role or done the robes of omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the suprema lex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court. The limited scope of judicial review succinctly put are :

(i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies;

(ii) A petition for a judicial review would lie only on certain well-defined grounds.

(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a Court is limited to seeing that Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.
(v) The Courts cannot be called upon to undertake the Government duties and functions. The Court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies. (See Ira Munn Vs. State of Ellinois, 1876 (94) US (Supreme Reports) 113)

5. What are the grounds available to a party seeking Judicial Review?

Following grounds for judicial review summarized by Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, are applicable in the Indian Judicial system as well.

- Illegality
- Irrationality (Unreasonableness)
- Procedural impropriety

The first two grounds are known as substantive grounds of judicial review because they relate to the substance of the disputed decision. Procedural impropriety is a procedural ground because it is aimed at the decision-making procedure rather than

the content of the decision itself. The three grounds are mere indications: the same set of facts may give rise to two or all three grounds for judicial review.

6. What constitutes illegality?

Following are some of the acts which will fall within the framework of illegality:

(a) Acting without of jurisdiction'
(b) Non-compliance of statutory provisions
(c) Non-application of mind
(d) Acting mechanically
(e) Ignoring relevant facts
(f) Taking into account irrelevant considerations

7. What is covered under irrationality?

As per Lord Diplock, a decision is irrational if it is "so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it." As seen above, this concept is a derivative of Wednesbury unreasonableness, after the decision in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation*, where it was first imposed

8. What is the scope of examination of the administrative decision on grounds of procedural impropriety?

Some of the instances of procedural impropriety are as under:

(a) Violation of the principles of Natural Justice

(b) Denial of reasonable opportunity – say by non-production of listed documents, denial of defence assistant sought by the charged officer, etc.

(c) Vagueness of charge

9. What is scope of the principle of proportionality?

Principle of proportionality has been explained by the Apex Court in the following terms in the case of Maharashtra Land Development Corporation and Ors. Vs. State of Maharashtra and Anr. [2010(11)SCALE675]

> *44. The principle of proportionality envisages that a public authority ought to maintain a sense of proportion between particular goals and the means employed to achieve those goals, so that administrative action impinges on*

the individual rights to the minimum extent to preserve public interest. Thus implying that administrative action ought to bear a reasonable relationship to the general purpose for which the power has been conferred. The principle of proportionality therefore implies that the Court has to necessarily go into the advantages and disadvantages of any administrative action called into question. Unless the impugned administrative action is advantageous and in public interest such an action cannot be upheld. At the core of this principle is the scrutiny of the administrative action to examine whether the power conferred is exercised in proportion to the purpose for which it has been conferred.

Thus, any administrative authority while exercising a discretionary power will have to necessarily establish that its decision is balanced and in proportion to the object of the power conferred.

45. This principle has found favour in recent times with this Court, and a number of decisions reflect the shift towards the doctrine of proportionality.

10. What are the grounds on which the courts intervene with the outcome of disciplinary proceedings?

Scope of judicial intervention has been clarified by the Hon'ble Supreme Court in Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Ors. [AIR2006SC1748, JT2006(4) SC404, (2006)4SCC713, 2006(3) SLJ211(SC)] in the following terms:

21. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the Enquiry Officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it should keep in mind the following:

(1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. [See ***State of Assam and Anr.*** *v.* ***Mahendra Kumar Das and Ors.*** *MANU/SC/0491/1970 : [1971]1SCR87*

(2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice [See ***Khem Chand*** *v.* ***Union of India and Ors.*** *MANU/SC/0120/1957 : (1959) ILLJ167SC and* ***State of Uttar Pradesh*** *v.* ***Om Prakash Gupta*** *MANU/SC/0513/1969 : AIR1970SC679].*

(3) Exercise of discretionary power involve two elements (i) Objective and (ii) subjective and existence of the exercise of an objective element is a

*condition precedent for exercise of the subjective element. [See **K.L. Tripathi** v. **State of Bank of India and Ors.** MANU/SC/0334/1983 : (1984)ILLJ2SC .*

*(4) It is not possible to lay down any rigid rules of the principles of natural justice which depends on the facts and circumstances of each case but the concept of fair play in action is the basis. [See **Sawai Singh** v. **State of Rajasthan** MANU/SC/0340/1986 : (1986)IILLJ390SC*

*(5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject matter of the charges is wholly illegal. [See **Director (Inspection & quality Control) Export Inspection Council of India and Ors.** v. **Kalyan Kumar Mitra and Ors.** 1987 (2) CLJ 344.*

*(6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. [See **Central Bank of India Ltd.** v. **Prakash Chand Jain** MANU/SC/0416/1968 : (1969)IILLJ377SC , **Kuldeep Singh** v. **Commissioner of Police and Ors.** MANU/SC/0793/1998 : (1999)ILLJ604SC].*

*22. We may notice that this Court in **Ramendra Kishore Biswas** v. **State of Tripura and Ors.** MANU/SC/0769/1998 : (1999)IILLJ192SC was clearly of the opinion that a civil suit challenging the legality of a disciplinary proceeding and consequent order of punishment is maintainable. Even this Court in its order dated 29.7.1994 said so. It is interesting to note that in the celebrated judgment of this Court in **State of U.P.** v. **Mohammad Nooh** MANU/SC/0125/1957 : [1958]1SCR595 this Court opined:*

> *On the authorities referred to above it appears to us that there may conceivably be cases - and the instant case is in point-where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent & loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play the superior Court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court of tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforementioned. This would be so also the more if the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without*

adequate legal training and background and whose glaring lapses occasionally come to our notice.

23. Yet again in ***Sher Bahadur*** *v.* ***Union of India and Ors.*** *MANU/SC/0682/2002 : (2002) IIILLJ848SC this Court observed:*

> *It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence. Though, the disciplinary authority cited one witness Shri R.A. Vashist, Ex. CVI/Northern Railway, New Delhi, in support of the charges, he was not examined. Regarding documentary evidence, Ext. P-1, referred to in the enquiry report and adverted to by the High Court, is the order of appointment of the appellant which is a neutral fact. The enquiry officer examined the charged officer but nothing is elicited to connect him with the charge. The statement of the appellant recorded by the enquiry officer shows no more than his working earlier to his re-engagement during the period between May 1978 and November 1979 in different phases. Indeed, his statement was not relied upon by the enquiry officer. The finding of the enquiry officer that in view of the oral, documentary and circumstantial evidence, the charge against the appellant for securing the fraudulent appointment letter duly signed by the said APO (Const.) was proved, is, in the light of the above discussion, erroneous. In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct. The High Court did not consider this aspect in its proper perspective as such the judgment and order of the High Court and the order of the disciplinary authority, under challenge, cannot be sustained, they are accordingly set aside.*

24. It is also of some interest to note that the first respondent itself, in the civil suit filed by the firm relied upon a copy of the report of the Enquiry Officer. The first respondent, therefore, itself invited comments as regard the existence of sufficiency of evidence/acceptability thereof and, thus, it may not now be open to them to contend that the report of the Enquiry Officer was sacrosanct.

25. We have referred to the fact of the matter in some details as also the scope of judicial review only for the purpose of pointing out that neither the learned Single Judge nor the Division Bench of the High court considered the question on merit at all. They referred to certain principles of law but failed to explain as to how they apply in the instant case in the light of the contentions raised before it. Other contentions raised in the writ petition also were not considered by the High Court.

11. Is re-appreciation of evidence permitted during Judicial Review?

It is unavoidable to some extent as clarified by the Apex Court in Johri Mal,

> *It is well-settled that while exercising the power of judicial review the Court is more concerned with the decision making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the Court is not competent to exercise its power when there are serious disputed questions of facts; when the decision of the Tribunal or the decision of the fact finding body or the arbitrator is given finality by the statute which governs a given situation or which, by nature of the activity the decision maker's opinion on facts is final. But while examining and scrutinizing the decision making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the court of judicial review can reappreciate the findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touch-stone of the tests laid down by the Court with special reference to a given case. This position is well settled in Indian administrative law. Therefore, to a limited extent of scrutinizing the decision making process, it is always open to the Court to review the evaluation of facts by the decision maker.*

12. Can the courts or tribunals modify the penalties awarded by the disciplinary authorities?

9. In Om Kumar and Ors. v. Union of India [MANU/SC/0704/2000 : 2000(7)SCALE 524, 2000 Supp 4 SCR 693] it was observed as follows:

> *"Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."*

13. If a violation of a statutory provision or principle of natural justice during a disciplinary proceedings is established, does it always lead to quashing the proceedings?

Not necessarily; The Hon'ble Supreme Court has in the case of Managing Director ECIL Vs, B Karunakar [1993 SCC (L & S) 1184] has evolved the test of prejudice. Even if an infraction of rule is established, the courts do look into the question as to whether any prejudice has been caused to the delinquent official as a result of the omission or commission. In case the infraction has resulted in any prejudice to the delinquent official, the court may direct the disciplinary authority to rectify the error and resume the enquiry from that stage on wards.

Quashing the entire proceedings is likely only in rare occasions such as where even the initiation of proceedings is established to be based on malafide or without any basis.

In extreme cases the court may even alter the penalty mostly where inordinate delay has intervened between the alleged misconduct and the judicial decision.

CHAPTER – 32

SAMPLE FORMS

(1)

Standard form of Order of suspension
[Rule 10(1), CCS (CCA) Rules]
[Read carefully Instruction (12) in Chapter 3 before commencing to use this Form]

NO……
Government of India……......
Dated…….

(Place of issue……..

ORDER

Whereas a disciplinary proceeding against Shri …….. (Name and Designation of the Government servant) is contemplated/pending.	Whereas a case against Shri …….. (Name and Designation of the government servant) in respect of a criminal offence is under investigation/inquiry/ trail.

Now, therefore, the President/ the undersigned (the Appointing Authority or an authority to which it is subordinate or any other authority empowered by the President in that behalf), in exercise of eh powers conferred by sub-rule (1) of Rule 10 of the Central Civil services (Classification, Control and Appeal) Rules, 1965, hereby places they said Shri …… under suspension with immediate effect.

It is further ordered that during the period that this order shall remain in force the headquarters of Shri ……. (name of the place) and the said Shri …….. shall not leave the headquarters without obtaining the pervious permission of the undersigned.

(By order and in the name of the President)

Signature2
Name and Designation of the suspending authority

1. Copy to Shri…… (name and designation of the suspended officer).Orders regarding subsistence allowance admissible to him during the period of his suspension will issue separately.
2. Copy to Shri ……(name and designation of the appointing authority)for information

(2)

Standard form of certificate to be furnished by the suspended official under FR 53 (2)

I, ……(Name of the Government servant) having been placed under suspension by order No.……..., dated……., while holding the post of …… Do hereby certify that I have not been employed in any business, profession or vacation for profit/remuneration/salary.

Signature
Name of Government Servant
Address

(3)

Order placing an officer under suspension when he is detained in custody
[Rule 10(2) of CCS(CCA)Rules, 1965]

No.
Government of India
Ministry of……
Dated……

(Place of issue…….

ORDER

WHEREAS a case against Shri ……. (name and designation of the Government servant) in respect of a criminal offence is under investigation.

AND WHEREAS the said Shri …… was detained in custody on …… for a period exceeding forty-eight hours .

NOW, THEREFORE, the said Shri …… is deemed to have been suspended with effect from the date of detention, i.e., the …….. in terms of sub-rule (2) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, and shall remain under suspension until further orders.

(Signature)…….
Designation of the suspending Authority……

(4)

Standard form of order for holding departmental enquiry on appeal being decided in favour of the Government servant

No.
Government of India
Ministry of .....
Dated.....

ORDER

WHEREAS Shri (here enter name and designation of the Government servant) was dismissed/removed/compulsorily retired from service with effect from (here enter the date of dismissal/removal or compulsory retirement) on the ground of conduct which led to his conviction on a criminal charge;

OR

WHEREAS the penalty of (name of the penalty imposed) was imposed on Shri (here enter the name and designation of the Government servant) on the ground of conduct which led to his conviction on a criminal charge;

AND WHEREAS the said conviction has been set aside by a competent Court of Law and the said Shri (here enter name and designation of the Government servant) has been acquitted of the said charge;

AND WHEREAS in consequence of such acquittal the President/undersigned has decided that the said order of dismissal/removal/compulsory retirement/imposing the penalty of (here enter the name of the penalty) should be set aside;

AND WHEREAS the President/undersigned on a consideration of the circumstances of the case has also decided that a further inquiry should be held under the provisions of CCS (CCA) Rules, 1965, against the said Shri (here enter the name and designation of the Government servant) on the allegations which led to his dismissal/removal/compulsory retirement from service/the imposing of the penalty of (here enter the name of penalty imposed).

NOW, TEHEREFORE, the President/undersigned hereby-

i. Set aside the said order of dismissal/removal/compulsory retirement from service / imposing the penalty of (here enter the name of the penalty imposed),
ii. Directs that a further enquiry should be held under the provisions of the CCS (CCA) Rules, 1965, against Shri ..... (here enter the name of the Government servant) on the allegations which led to his dismissal/removal/compulsory retirement from service the imposing of the penalty of (here enter the name of the penalty imposed),
iii. Directs that the said Shri ..... (here enter the name of the Government servant) shall, under sub-rule (4) of Rule 10 of the CCS (CCA) Rules,1965, be deemed to have been placed under suspension whit effect from (here enter the date of the dismissal or removal or removal or compulsory retirement from service), and shall continue to remain under suspension until further orders.

Station:
Date: Disciplinary Authority

(5)

Standard form of order for revocation of suspension order

[Rule 10(5) (C), CCS(CCA)Rules]

No.
Government of India
Ministry of ……
Dated ……

Place of issue……

ORDER

Whereas an order placing Shri …… (name and designation of eh Government servant) under suspension was made/was deemed to have been made by …… on ……

Now, therefore, the President/the undersigned (the authority which made or is deemed to have made the order of suspension or any authority to which that authority is subordinate) in exercise of eth powers conferred by Clause (C) of sub-rule (5) of Rule 10 of eh Central Civil Services (Classification, Control and Appeal) Rules, 1965, hereby revokes the said order of suspension with immediate effect.

(By order and in the name of the President)

Signature1

Name and Designation of the authority making this order

1 Copy to Shri ……(name and designation of the suspended officer).
2 Copy to Shri ……(name and designation of the appointing authority) for Information.
3 Copy to Shri ……..(name and designation of the lending authority making the order of suspension
4 Copy to Shri ……..(name and designation of the authority making the order of suspension)
5 The reasons for revoking the order of suspension are as follows:-

Note 1: Endorsement as in Para,2 should be made where the order of revocation of suspension is made by an authority lower than the Appointing Authority,.

Note 2: Endorsement as in Para,3 should be made where the oreder of suspension has been made against a “Borrowed Officer”.

Note3: Endorsement as in Para 4 should be made wher the order of revocation of suspension is made by an authority other than the authority which made or is deemed to have made, the order of suspension.

Note4: Para.5 should not be inserted in the copy sent to the suspended officer.

Note5; Paras.2 to 5 should not be inserted in the copy sent to the suspended officer.

[G.I., MHA., O.M. No. 234/18/65-AVD, Dated the 13th January, 1965.]

(6)

Standard form of charge-sheet for major penalties
[Rule 14 of CCS (CCA) Rule]

No…….
Government of India
Ministry of ……
Dated……

MEMORANDUM

The President/undersigned proposes to hold an inquiry against Shri……under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustaine4d are also enclosed (Annexures - III and IV).

2. Shri …….. is directed to submit within 10 days of the receipt of his Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect o f those articles of charget as are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Shri…….. is further informed that if he does not submit his written statement of defence on or before the date specified in Para. 2 above, or does not appear in person before the inquiring authority or other wish fails or refuses to comply with the provisions of Rule 14 of the CCS(CCA) Rules, 1965, or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him ex parte.

5. Attention of Shri …….. Is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964, under which no Government servant shall bring of attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government, if any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri …… is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rules 20 of the CCS(Conduct) Rules, 1964.

6. The receipt of the Memorandum may be acknowledged.

(By order and in the name of eth President)
( )
Name and designation of Competent Authority

To
Shri ……
……...

[1]ANNEXURE – 1

Statement of articles of charge framed against Shri …… (name and designation of the Government Servant).

Article I

That the said Shri ……while functioning as ……During the period ……

Article II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri ……

Article III

That during the aforesaid period and while functioning in eh aforesaid office, the said Shri……..

[1]ANNEXURE-II

Statement of imputation of misconduct or misbehaviour in support of the articles of charge framed against Shri …… (name and designation of the Government servant)

Article I
Article II
Article III

---

[1]ANNEXURE-III

List of documents by which the articles of charge framed against Shri …….. (name and designation of Government servant) are proposed to be sustained.

---

[1]ANNEXURE-IV

List of witnesses by whom the articles of charge framed against Shri …….. (name and designation of Government servant) are proposed to be sustained.

(7)

Standard form of order relating to appointment of Board of Inquiry
[Rule 14(2) of CCS(CCA)Rules,1965]

No……
Government of India
Ministry of ……
Dated……

(Place of Issue……..

ORDER

WHEREAS an inquiry under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, is being held against Shri …… (name and designation of Government servant.)

AND WHEREAS the President/the undersigned, considers that a Board of Inquiry should be appointed to inquire into the charges framed against the said Shri……..

NOW, THEREFORE, the President/the undersigned, I exercise of the powers conferred by sub-rule (2) of the said rule, hereby appoints-

A Board of Inquiry consisting of :

1]
2] (Here enter name and designation of Member of the Board of Inquiry)
3]

(By order and in the name of eth President)

(Signature)

Name and designation of Competent Authority

Copy to (name and designation of Government servant)
Copy to (name and designation of Member of eh Board of Inquiry)
Copy to (name and designation of the lending authority) for information

(8)

Standard form of order relating to appointment of Inquiring Authority

[Rule 14(2) of CCS(CCA)Rules,1965]

No…….
Government of India
Ministry of …….
Dated……

(Place of Issue……..

WHEREAS an inquiry under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, is being held against Shri …….. (name and designation of Government servant)

AND WHEREAS the President/the undersigned, considers that an Inquiring Authority should be appointed to inquire into the charges framed against the said Shri…….

NOW, THEREFORE, the President/the undersigned, in exercise of the powers conferred by sub-rule (2) of the said rule, hereby appoints Shri……(name and designation of the inquiring Officer) as the Inquiring Authority to inquire into the charges framed against the said Shri……

(By order and in the name of eth President)
(Signature)
Designation of the Competent Authority

Copy to (name and designation of Government servant)
Copy to (name and designation of Inquiring Authority)
Copy to (name and designation of the lending authority), where necessary) for information

(9)

Standard form of order relating to appointment of Inquiry Officer
(In place of Inquiry Officer originally appointed)
[Rule 14(2) read with Rule14 (22)]

No…….
Government of India
Ministry of …….
Dated……

(Place of Issue……..

ORDER

WHEREAS an inquiry under Rule 14 of the Central Civil services (Classification, Control and Appeal) Rules, 1965, is being held against Shri……(name and designation of the Government servant facing enquiry)

WHEREAS Shri ……. (name and designation of the authority who was holding inquiry) was appointed inquiring Authority to inquire into the charges against Shri …… Government (name and designation of the Government servant facing enquiry.) vide Order No..... dated…… (give the No. and date of the previous Order).

AND WHEREAS Shri …….. (name of the previous Inquiry Officer) after having heard and recorded the whole/part of eth evidence has since been transferred/is not available and it is necessary to appoint another officer as Inquiring Authority to inquire into the charges against Shri……

NOW, THEREFORE, the President/the undersigned in exercise of the powers conferred by sub-rule (2) read with sub-rule(2) of Rule 14 of the CCS (CCA) Rules, 1965, hereby appoints Shri ……. (name and designation of the new Inquiring Authority) as Inquiring Authority to inquire into the charges framed against the said Shri…… (name of the Government servant facing the enquiry.) vide Shri ……..(name of the previous inquiry Officer).

(By order and in the name of eth President)

Signature

Designation of the Competent Authority

Copy to:
1. Name and designation of the Government servant.
2. Inquiring Authority.

(10)

Standard form of the order relating to the appointment of Presenting Officer
[Rule 14(5) (C)**]**

No……
Government of India
Ministry of
Dated……

(Place of Issue……..

ORDER

WHEREAS an inquiry under Rule 14 of the Central Civil services (Classification, Control and Appeal) Rules, 1965, is being held against Shri …… (name and designation of the accused officer)

AND WHEREAS the President/undersigned considers that a Presenting Officer should be appointed to present on behalf of the President/undersigned the case in support of the articles of charge.

NOW, THEREFORE, the President/the undersigned in exercise of the powers conferred by sub-rule (5) (C) of the rules 14 of the said rules, hereby appoints Shri …… (name and designation of Presenting Officer) as the Presenting Officer

(By order and in the name of eth President)

Disciplinary Authority/Authority competent to
authenticate order in the name of President

Copy to:

1. The Presenting Officer.
2. The Accused Officer.
3. The Inquiry Officer.
4. Copy for information and necessary action to the CBI with reference to their Letter No……., dated……

Disciplinary Authority/Authority
competent \ to authenticate order in the name of President.

(11)

Standard form of memorandum of charge for minor penalties
[Rule 16 of CCS(CCA)Rules,1965]

No…….
Government of India
Ministry/ Officer of ……
Dated……

(Place of Issue……..

MEMORANDUM

Shri…….(Designation)…….(office in which working)……is hereby informed that it is proposed to take action against him under Rule of CCS (CCA) Rules, 1956.A statement of the imputations of misconduct or misbehaviour on which action is proposed to be taken ad mentioned above is enclosed.

2. Shri ……..... is hereby given an opportunity to make such representation as he may wish to make against the proposal.

3. If Shri…….. fails to submit his representation within 10 days of the receipt of this Memorandum, it will be presumed that he has no representation to make and orders will be liable to be passed against ……. Ex parte.

4. The receipt of this Memorandum should be acknowledgement by Shri…….

[1](By order and in the name of the president)
[2] Signature
Name and designation of Competent Authority

To
Shri…….
…….

(12)

Standard form for initiation of minor penalty proceedings
(in case where disciplinary authority decides to hold the inquiry)
[Rule 16 of CCS(CCA)Rules,1965]

No.……
Government of India
Ministry/ Officer of ……
Dated……

MEMORANDUM

In continuation of Memorandum No. ……., dated …… issued under Rule 16 of the CCS (CCA) Rules, 1965, the President/undersigned is of the opinion that it is necessary to hold an enquiry against Shri……. Under Rule 16 (1) (b) of the CCS (CCA) Rules, 1965. The substance of the imputation of misconduct or misbehaviour in respect of which the inquiry is prosposed to be held is set out in the enclosed statement of article of charge (Annexure-1). A statement of the imputation of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-II) A list of documents by which and a list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed (Annexures -III and IV).

2. Shri …….. is directed to submit within ten days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted .He should, therefore, specifically admit or deny each article of charge.

4. Shri …… is further informed that if he does not submit his written statement of defence on or before the date specified in Para. 2 above, or does not appear in person before the Inquiring Authorities or otherwise fails or refuses to comply with the provisions of Rules 14 and 16 of the CCS (CCA) Rules, 1965 or the orders/directions issued in pursuance of the said Rule, the Inquiring Authority may hold the inquiry against him Ex-parte.

5. Attention of Shri …… Is invited to Rule 20 of the CCs (conduct) Rules, 1965, under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri……..... is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of CCs (Conduct) Rules, 1964.

6. The receipt of this Memorandum may be acknowledged.

[1](By order and in the name of the president)
[2] Signature
Name and designation of Competent Authority

To
Shri ……
……

[Note:-Annexures-I to IV as in Item6.]

227

(13)

Standard form of order for taking disciplinary action in common Proceedings
[Rule 18 of CCS(CCA)Rules,1965]

No…….
Government of India
Ministry/ Officer of ……
Dated……

ORDER

WHEREAS the Government servants specified below are jointly concerned in a disciplinary case.

Shri ……..
Shri……..
Shri……..

[1]NOW, THEREFORE, in exercise of the powers, conferred by sub-rules(1) and (2) of Rule 18, Central Civil Services (CCA) Rules, 1965, the President/the undersigned hereby directs-

(i) That disciplinary action against all the said Government servants shall be taken in a common proceeding.

(ii) That ---------- (name and designation of the authority) shall function as the Disciplinary Authority for the purpose of the common proceeding and shall be competent to impose of the following penalties, namely:-

[3](Here specify the penalties)

(iii) That the procedure prescribed in Rules[5] 14, 15 and 16 shall be followed in the said proceedings.

[6](By order and in the name of the president)

Signature[7]

Name and designation of Competent Authority

Copy to:

1 Shri……. (Name and Designation)
2. Shri……. (Name and Designation)
3. Shri……. (Name and Designation)

(14)

Standard form of order for appointment of Inquiring Authority in Common Proceedings
[Rule 18 of CCS(CCA)Rules,1965]

No……
Government of India
Ministry/ Officer of …….
Dated……

ORDER

WHEREAS an inquiry under Rule 14 of the Central Civil services (Classification, Control and Appeal) Rules, 1965, is being held against the officers specified below:

Shri……
Shri……
Shri……
Shri……
Shri……

WHEREAS common proceedings have been ordered against the said officers.

AND WHEREAS the President/the undersigned considers that the Inquiring Authority should be appointed to inquire into the charges framed against the said Officers.

NOW, THEREFORE, the President/the undersigned in exercise of the powers conferred by sub-rule (2) of the said rule hereby appoints shri……(name and designation of the inquiry Officer) as the inquiring Authority to inquire into the charges framed against the said officers.

1(By order and in the name of the President)

Disciplinary Authority/Authority
competent to authenticate order in the name of President[1]

Copy to :
1. The accused officers.
2. Presenting Officers.
3. Inquiring Authority with the relevant documents.
4. The central Vigilance Commission.

Disciplinary Authority/Authority competent to
authenticate order in the name of President[2]

(15)

Standard form of order for appointment of Presenting Officer in Common Proceedings

[Rule 18 of CCS(CCA)Rules,1965]

No……
Government of India
Ministry of …….
Dated……

WHEREAS an inquiry under Rule 14 of the Central Civil services (Classification, Control and Appeal) Rules, 1965, is being held against the officers specified below:

Shri……
Shri……
Shri……
Shri……

WHEREAS common proceedings have been ordered against the said officers.

AND WHEREAS the President/the undersigned considers it necessary to appoint a Presenting Officer to Present the case in support of the articles of charge against the said officers before the Inquiring Authority.

NOW, THEREFORE, the President/ undersigned in exercise of the powers conferred by sub-rule (5) (C) of the said rule hereby appoints Shri……(name and designation of the Presenting Officer) as Presenting Officer to present the case in support of the articles of charge against the said Officers before the Inquiring Authority .

1(By order and in the name of the President)

Disciplinary Authority Authority
competent to authenticate order in the name of President

Copy to:

1 The accused officers.
2 Presenting Officers.
3 Inquiring Authority with the relevant documents.
4 The central Vigilance Commission.

Disciplinary Authority
[1]Authority competent to authenticate
Order in the name of President

(16)

Standard form of show- cause notice for imposing penalty to be issued on the Government servant on his conviction
[Rule 19 of CCS(CCA)Rules,1965]

No…….
Government of India
Ministry of …….
Dated……

WHEREAS Shri (here enter name and designation of the Government servant) has been convicted on a criminal charge under section (here enter the section or sections under which the Government servant was convicted) of (here enter the name of the statute concerned) and has been award a sentence of (here enter the sentence awarded by the Court);

AND WHEREAS the undersigned proposes to award an appropriate penalty under Rule 19 of the Central Civil Services (Classification, Control and Appeal Rules, 1965, taking into account the gravity of the criminal charges;

AND WHEREAS before coming to a decision about the quantum of penalty Shri (here enter name of the convicted official) was given an opportunity of personal hearing to explain the circumstances why penal action should not be taken against him in pursuance of the provisions of Rule 19 ibid;

AND WHEREAS on a careful consideration of the inquiry report (copy enclosed), the President/undersigned has provisionally come to the conclusion that Shri (here enter the name of the official) is not a fit person to be retained in service/the gravity of the charge is such as to warrant the imposition of a major/minor penalty and accordingly proposes to impose o him the penalty of (here enter the proposed penalty);

NOW, THEREFORE, Shri (here enter the name of the official) s hereby given an opportunity of making representation on the penalty proposed above. Any representation which he may wish to make against the penalty proposed will be considered by the undersigned. Such a representation, if any, should be made in writing and submitted so as to reach the undersigned not later than fifteen days from the date of receipt of this memorandum by Shri (here enter the name of the Government servant).

The receipt of this Memorandum should be acknowledged.

(Name and designation of the Competent Authority)

Note.- In the above, form, portions not required should be struck out according to the circumstances of each case.

(17)

Form of order for imposing penalty on the Government servant on his conviction

No.
Government of India
Ministry of.....
Dated.....

ORDER

WHEREAS Shri (here enter name and designation of the Government servant) has been convicted on a criminal charge under section (here enter the section or sections under which the Government servant was convicted) of (here enter the name of the statute concerned);

AND WHEREAS it is considered that the conduct of the said Shri (here enter the name and designation of the Government servant) which has led to his conviction is such as to render his further retention in the public undesirable/the gravity of the charge is such as to warrant the imposition of a major/minor penalty;

AND WHEREAS Shri (here enter name of the official) was given an opportunity of personal hearing and offer his written explanation;

AND WHEREAS the said Shri (here enter name of the official) has given a written explanation which has been duly considered by the President/undersigned;

NOW, THEREFORE, in exercise of the powers conferred by Rule 19 (i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and in consultation with the Union Public Service Commission, the President / undersigned hereby dismisses / removes the said Shri (here enter the name and designation of the Government servant) from service of directs that the said Shri (here enter the name and designation of the Government servant) shall be compulsorily retired from service with effect from (here enter date of dismissal / removal / compulsory retirement) / imposes the penalty of (here enter the penalty).

Station:
Date: Disciplinary Authority

Note:- In the above form, portions not required should be struck out according to the circumstances of each case.

(18)

Standard form of order for setting aside order of punishment on appeal being decided in favour of the Government servant

No.
Government of India
Ministry of.....
Dated.....

ORDER

WHEREAS Shri (here enter name and designation of the Government servant) was dismissed / removed / compulsorily retired from service with effect from (here enter the date of dismissal / compulsory retirement on the ground of conduct which led to his conviction on a criminal charge;

OR

WHEREAS the penalty of (here enter the name of the penalty) was imposed on Shri (here enter the name and designation of the Government servant) on the ground of conduct which led to his conviction on a criminal charge;

AND WHEREAS the said conviction has been set aside by a competent Court of Law and the said Shri (here enter the name and designation of the Government servant) has been acquitted of the said charge;

NOW, THEREFORE, the President / undersigned hereby sets aside the order of dismissal / removal / compulsory retirement from service / imposing the penalty of (name of the penalty imposed).

Station:
Date: Disciplinary Authority

(19)

Form for summoning public servant/private individual as witness

No……
Government of India
Ministry of …….
Dated……

(Place of Issue……..

To

Sir,

I am the Inquiring Authority in the proceedings against Shri …… Your evidence is considered material. I request you to appear before me on …… at …….(time and place)……

You are/are not likely to be required to stay at the place for more than a day.

Yours faithfully,

(Inquiring Officer)

[1] Copy to …… with the request to permit the official mentioned above to attend the enquiry on these dates.

(Inquiring Officer)

(20)

Form of certificate by Inquiry Officer for withnesses

This is to certify that Shri (name and designation, office etc,) appeared before me as a whines no…….. at (place)…… in the departmental inquiry against Shri (name and designation, etc). and was discharged on …….. at (time)……

Nothing has been paid to him on account of his travelling and other expenses.

Place:
Date:

(Signature)
Disciplinary Authority/Board of Inquiry
Inquiring Officer

Copy forwarded for information to the Ministry/Department of ……
Secretary to the Government of (name of State Government) ……...Department.

(21)
Form of Certificate by Inquiry Officer to the Presenting Officer/Defence Assistant

This is to certify that Shri (name and designation, office, etc) attended the proceedings in eh departmental inquiry against Shri (name and designation, etc) to present the case in support of the charges/to assist the said Shri (name)……in presenting his case on……at (place)……

Nothing has been paid to him on account of his travelling and other expenses.

Place:
Date:

(Signature)
Disciplinary Authority/Board of Inquiry
Inquiring Officer

Copy forwarded for information to the Ministry/Department of ……..

(22)

Pro forma for forwarding disciplinary case to the Union Public Service Commission
[Instruction (39) below Rule 14]

PART-1-SERCVICE AND RELATED PARTICULARS

1. Name of charged officer and the service on which borne …. ….. …..

2. (i) Whether temporary/permanent/contract/service …. …..
   (ii) If confirmed, date of confirmation ….
   (iii)Post, if any, in which quasi-permanent

3 Post held substantively if in permanent service:
   (a) Designation ….. …..
   (b) Scale of pay (indicating stages, EB, etc.) ….. Rs.
   (c) Pay drawn ….. …… Rs.
   (d) Date from which pay shown against (c) drawn ….. …..
   (e) Date increment …… …..

4 Post held at present:
   (a) Designation ….. …..
   (b) Scale of pay (indicating stages, EB, etc.) ….. Rs.
   (c) Pay drawn ….. …… Rs.
   (d) Date from which pay shown against (c) drawn ….. …..
   (e) Date of next increment …. …..

5. The next lower post (along with pay scale)/grade, the officer would have held but for his appointment to the present post he is holding …..

6. Date of Birth ….. ….. …..

7. Date of joining Government service …..

8. Due date of retirement or actual date of retirement, if already retired. …..

9. (a) Amount of monthly pension admissible/sanctioned ….. ….. Rs.
   (b) (i) Amount of gratuity admissible …. Rs.
   (ii) Amount of gratuity sanctioned …. Rs.

10 (a) Appointing Authority in respect of the post held at present, or the authority which actually appointed the person, if that authority is higher …….
   (b) Authority competent to impose the penalty in respect of the post held at present ……
   (c) Appellate Authority in respect of eh Post held at present
   ….. ……

11. Whether an oral enquiry, if required under the rules, has been held ….. …..

12. Name and designation of the Inquiry Officer appointed, if any …..

PART –II – DETAILS OF CASE RECORDS

(All the records are required to be arranged and cross-referenced, as indexed below and page numbers of the file/folders to be indicated against each item.)

Item [1]Reference/Comments

A. ORIGINAL CASES

(Where the Central Government or the State Government is the Disciplinary Authority and an order of penalty is to be passed for the first time)

(a) Complaint, if any, received by the authorities …..

(b) (i) Report of the preliminary enquiry, if any held in eh matter leading to the institution of formal disciplinary proceedings against the Charged Officer (together with depositions recorded). ….. …..

(ii)Order of suspension/revocation of suspension, if any ….. …..

(c) Order, if any of eh Competent Authority for joint/common proceedings where two or More Government servants are involved,

(d) (i) Charge-sheet together with the statement of imputations, along with enclosures …..

(iii) Records of delivery of charge-sheet to the Charged Officer ….. …..

(iv) Whether the charge-sheet issued as per the Rules ….. …..

(e) Reply of the Charged Officer …..

(f) A note from the Disciplinary Authority explaining the factual or procedural points, if any, Raised in the Charged Officer's reply in minor penalty cases where no enquiry has been held ….. …..

(g) Order of the Disciplinary Authority appointing the Inquiry Officer.

(h) Order of the Disciplinary Authority appointing the Presenting Officer …… …..

(i) Daily Order Sheet maintained by the Inquiry Officer indicating the progress of oral Enquiry .....

(j) Correspondence of the Inquiry Officer, if any, with the Disciplinary Authority, or the Charged Officer ....

(k) (i) Depositions –oral statements recorded from prosecution witnesses and defence witnesses ....

(ii) Statement of defence of the Charged Officer
(iii) General examination of eh Charged Officer
(iv) Whether copies of relevant documents have been supplied to the Charged Officer
(v) Exhibits:
(a) Prosecution ....
(b) Defence ....

(l) (i) Written brief, if any submitted by the Presenting Office..... .....
(ii) Whether a copy of brief of Presenting Officer supplied to the charged Officer ....
(m) Written brief, if any submitted by the Charged Officer ....

(n) Inquiry Officer's report ....

(o) (i) Whether Inquiry Officer's report provided to the Charged Officer ....
(ii) Whether disagreement of eh Disciplinary Authority, if any, on the report of the inquiry Officer communicated to the Charged Officer ....
(iii) Representation of the Charged Officer on the findings of the Inquiry Officer .....

iv) Parawise comments of the Disciplinary Authority on eh representation of the Charged Officer, if any ....

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10061 OF 2010
[Arising out of SLP [C] No.29901/2010]

State of U.P. & Ors. … Appellants

Vs.

Jasvir Singh & Ors. … Respondents

SUPREME COURT OF INDIA

O R D E R

R.V.RAVEENDRAN, J.

Leave granted. Heard.

JUDGMENT

2. In regard to acquisition of the lands of respondents under notifications dated 18.8.1981 and 14.11.1981 issued under section 4(1) and section 6 of Land Acquisition Act, 1894 ('Act' for short), the LAO had made an award offering a compensation of Rs.12000/- per acre which was increased to Rs.17000/- per acre by the Reference Court, and to Rs.30,000/- per acre by the Allahabad High Court. On further appeal by the respondents, this Court by order dated 12.9.2005 set aside the judgment dated 29.1.2004 of the High

Court and remanded the matter to the High Court for fresh decision on merits in regard to quantum and statutory benefits, in accordance with law. This Court also observed that since the appeals were old, the High Court will have to take steps to dispose the appeals expeditiously. We are informed that the appeals (FA No.880 of 1993 and FA No.401 of 1998) are still pending consideration by the High Court.

3. The respondents thereafter filed a writ petition (No.77449 of 2005) seeking a direction for issue of a fresh notification under sections 4 and 6 of the Act, after setting aside the notifications dated 18.8.1981 and 14.11.1981 under sections 4(1) and 6 of the Act. They also sought a direction to the appellant to pay mesne profits and damages with interest, after adjusting the amount under the award already made, from the date of taking possession (19.9.1986) till date of issuance of fresh notification under Section 4(1) of the Act. The respondents thereafter filed two applications for amendment of prayers seeking a direction for determination of market value as on the date of final award after a fresh notification and not with reference to the notification dated 18.8.1991.

4. In the said writ proceedings, the Division Bench of the High Court apparently suggested to the state government that it should settle the claim

SUPREME COURT OF INDIA
JUDGMENT