Government of Andhra Pradesh

HAND BOOK ON DISCIPLINARY PROCEEDINGS

2023

Andhra Pradesh Vigilance Commission

Printed and Published by
A.P. Human Resources Development Institute

For official use only

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Government of Andhra Pradesh

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FOREWORD

Andhra Pradesh Vigilance Commission has brought out the Hand Book on Disciplinary Proceedings for the benefit of Disciplinary Authorities, Inquiring Authorities and Presenting Officers who play a vital role in Vigilance administration in the State. Government have formulated various Acts & Rules and have issued various instructions complementing these Rules to clarify and elaborate the content therein. Accessing these instructions issued over a period of time and interpreting them correctly, have become a daunting task. Therefore, this Hand Book is brought out to bring clarity and ease to understand the interpretations of Acts/Rules and procedures at a glance.

The Hand Book covers various aspects of disciplinary proceedings right from handling of complaints to imposing of penalties and dealing with Court orders connected therewith. An attempt is made to give comprehensive coverage of the duties, responsibilites and functions of Disciplinary Authorities, Inquiring Authorities and Presenting Officers duly quoting latest rules/instructions/circulars and also relevant case laws. This also contains outline of principles of natural justice and the rights and protections enshrined in the Constitution and statutes available to the government servants involved in disciplinary cases.

The Hand Book is composed in Question & Answer format in a lucid style for easy grasping of the content. In this regard, Commission would like to acknowledge the invaluable support of the Department of Personnel & Training and the Institute of Secretariat Training and Management, Ministry of Personnel, Public Grievances & Pensions, Govt. of India, as the core content and Question & Answer format have been directly reproduced from its publication 'Handbook for Inquiry Officers and Disciplinary Authorities'.

Commission thank Government of Andhra Pradesh, AP HRDI and the officers working in the Commission for their support to prepare and publish the Hand Book.

I am sure this would become a valuable resource for the officers dealing with Vigilance administration. Commission solicits feedback and valuable suggestions to improve its further editions in future.

VEENA ISH
Vigilance Commissioner

DISCLAIMER

1. “Hand Book on Disciplinary Proceedings” is intended only to be a reference book and it cannot be a substitute for Acts, Rules, Orders, Instructions etc. of various authorities.

2. Commission has taken great care to provide accurate and updated information in the Hand Book. However, Commission will not be responsible for any loss or damage caused to any person on account of any errors or omissions which might have crept in.

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CHAPTER - I

DISCIPLINARY PROCEEDINGS: CONTEXT AND OVERVIEW

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 General Administration Department, 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 General Administration 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. All India Services (Discipline & Appeal) Rules, 1969 and Andhra Pradesh Civil Services (Classification, Control, and Appeal) Rules, 1991 cover a vast majority of the A.I.S. Officers and A.P. State Government employees respectively. 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 A.P. Civil Services (CC&A) Rules, 1991 apply only to a limited number of employees in the State 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.

5. This handout is predominantly based on the A.P.C.S. (CC&A) Rules, 1991. 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, an attempt is made to prepare the Handbook for ready reference.

1. Role of Disciplinary Authorities

The term Disciplinary Authorities refers to such authorities who have been entrusted with powers to impose any of the penalties prescribed on the employees. In respect of the organisations falling under the purview of All India Services (Discipline & Appeal) Rules, 1969 and A.P. Civil Services (Classification, Control & Appeal) Rules 1991, the term Disciplinary Authority is defined in clause (b) of Rule-2 and clause (c) of Rule-2 of the respective Rules as the authority competent to impose on a Member of Service / Government servant any of the

penalties specified in Rule 6 of All India Services (Discipline & Appeal) Rules, 1969 and Rule 9 and 10 of Andhra Pradesh Civil Services (Classification, Control & Appeal) Rules, 1991.

2. Disciplinary Authority is defined with reference to the post held by the officer / employee. Various Disciplinary Authorities are specified in Rule 7 of A.I.S. (D&A) Rules, 1969 and Rule 11 of A.P.C.S. (CC&A) Rules, 1991. Thus, there may be more than one Disciplinary Authority in every organisation.

3. 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 some of those penalties.

Example: The Engineer-in-Chief, Water Resources Department can impose all the penalties as specified in Rule 9 of A.P.C.S. (CC&A) Rules, 1991 on Assistant Executive Engineer and Deputy Executive Engineer and whereas the Superintending Engineer (SE), Water Resources Department, can impose all minor penalties and major penalty of stoppage of annual grade increments with cumulative effect on Assistant Executive Engineer and Deputy Executive Engineer.

2. 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 organisations. 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.

3. Relationship between Appointing Authority and Disciplinary Authority

Appointing Authorities are empowered to impose major penalties. It may be recalled that clause (1) of Article 311 of Constitution provides that no person who is member of a civil service of the Union or an All India Service or a civil service of a State or holds a civil post under the Union or a State shall 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.

2. In this Hand Book, 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.

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

Rule 2 of A.I.S. (D&A) Rules, 1969 and clause (a) of Rule 2 of the A.P.C.S. (CC&A) Rules, 1991 lays down the procedure for determining the Appointing Authority in relation to a Member of Service or Government servant respectively.

5. How to find out the Disciplinary Authority

Firstly, it must be remembered that the Disciplinary Authority is determined with reference to the Member of Service / Employee proceeded against.

2. Rule 7 of All India Services (Discipline & Appeal) Rules, 1969 lay down the Disciplinary Authorities in respect of Members of Service.

3. Rule 11 and Appendix II, III & IV of the A.P. Civil Services (Classification, Control & Appeal) Rules, 1991, lay down the details of the disciplinary authorities in respect of various grades of employees in different services in the Government.

4. The question as to who is the appropriate disciplinary authority must be raised and answered not only while issuing charge memo. 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 organisation.

6. Functions of the Disciplinary Authority

(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 suspected employee under suspension;

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

(e) Consultation with the A.P. Vigilance Commission where necessary;

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

(g) Issue of charge memo. where necessary – Rule 8 or 10 of A.I.S. (D&A) Rules, 1969 / Rule 20 or 22 of A.P.C.S. (CC&A) Rules, 1991, as the case may be;

(h) In the case of minor penalty proceedings, deciding, either suo-motu or based on the request of the suspected 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 memo., 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 charged employee;

(k) Passing final order imposing penalty or closing the case, based on the response of the MOS / charged employee;

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

(m) Taking a view on the request, if any, of the MOS / charged 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 Inquiring Authority – Rule 9 (1) of A.I.S. (D&A) Rules, 1969 or Rule 21 (1) of A.P.C.S. (CC&A) Rules, 1991, as the case may be;

(p) Deciding as to whether the conclusion arrived at by the Inquiring Authority is acceptable and to record reasons for disagreement if any – Rule 9 (2) of A.I.S. (D&A) Rules, 1969 or Rule 21 (2) of A.P.C.S. (CC&A) Rules, 1991, as the case may be;

(q) Consultation with A.P.V.C. / U.P.S.C. / A.P.P.S.C. where necessary;

(r) Forward the inquiry report to the delinquent MOS / employee together with the reasons for disagreement, if any – Rule 9 (2) of A.I.S. (D&A) Rules, 1969 or Rule-21 (2) of A.P.C.S. (CC&A) Rules, 1991, as the case may be;

(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 9 (3) & (4) of A.I.S. (D&A) Rules, 1969 or Rule 21 (4) & (5) of A.P.C.S. (CC&A) Rules, 1991, as the case may be;

(t) Pass final order in the matter – Rule 9 (5) of A.I.S. (D&A) Rules, 1969 or Rule 21 (4) & (5) of A.P.C.S. (CC&A) Rules, 1991, as the case may be;

(u) On receipt of copy of the appeal from the penalized MOS / employee, prepare comments on the Appeal and forward the same to the Appellate Authority together with relevant records. – Rule 18 (4) of A.I.S. (D&A) Rules, 1969 or Rule 36 (3) of A.P.C.S. (CC&A) Rules, 1991, as the case may be.

7. Can any authority subordinate perform the functions of the Disciplinary Authority?

Where a statutory function has been performed by an authority, who has not been empowered to perform 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. vs. B.V. Gopinathan) has held that the statutory power under Rule 14(3) of the Central Civil Services (CCA) Rules 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."

8. Knowledge for the efficient discharge of the duties in conducting Disciplinary Proceedings

- Constitutional provisions under Part III (Fundamental Rights) and Part XIV (Services Under the Union and the States)
- Principles of Natural Justice
- A.I.S. (D&A) Rules, 1969 or A.P.C.S. (CC&A) Rules, 1991 or the relevant rules applicable to the organisation
- Government of India / Govt. of Andhra Pradesh instructions relating to disciplinary proceedings
- Vigilance Manuals
- Instructions of C.V.C., U.P.S.C. and A.P.P.S.C. relating to disciplinary proceedings
- Case law relating to disciplinary proceedings

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CHAPTER - II

CONSTITUTIONAL PROVISIONS RELATING TO DISCIPLINARY PROCEEDINGS

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 or the Governor 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'. All India Services (Discipline & Appeal) Rules, 1969 and A.P. Civil Services (CC&A) Rules, 1991 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 or State Government Servants shall depend upon the pleasure of the President or of the Governor of the State. 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 or of the Governor 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 or of the Governor.

3. Article 311 basically grants two protections to the Government servants. 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 have 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?

(b) The power of 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 decentralization 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 clause (a) of Rule-2 of A.P. Civil Services (Classification, Control and Appeal) Rules, 1991 and other statutory rules which have been framed under the Proviso to Article 309.

4. The second protection granted by Article 311 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.

5. 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;
- inspect the documents;
- cross examine the witness deposing for the Disciplinary Authority;
- lead evidence in defence, etc.

Explaining the above Constitutional provisions, the Supreme Court held that the rules of natural justice require that,-

(i) charged employee should be given notice of the charges he is called upon to explain and the allegations on which those were based;

(ii) evidence should be taken in the presence of the charged employee;

(iii) he should be given an opportunity to cross examine the prosecution witness;

(iv) he should have an opportunity of adducing all relevant evidence on which he relies. No material should be relied upon against him without giving him an opportunity of explaining such material.

Non-compliance with the Constitutional requirements or deviation therefrom will render the proceedings null and void.

6. 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

7. 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.

> An order of termination simplicitor passed during the period of probation has been generating undying debate. The two decisions of this Court in Deepti Prakash Banerjee vs. MANU/SC/0101/1999: Satyendra Nath Bose National Center for Basic Sciences, Calcutta and Ors. [1999]1SCR532 and Pavanendra Narayan Verma vs. 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."

8. 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 clause (2) of Article 311 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 or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold the inquiry.

9. It is also relevant to note that the special circumstances under which penalty can be imposed on a Member of Service or Government Servant without inquiry have been reproduced in Rule 14 of the All India Services (D&A) Rules, 1969 and Rule 25 of A.P. Civil Services (CC&A) Rules, 1991.

10. 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".

11. 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.

12. 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.

References:

1. Chapter-XXI & XXII in Vigilance Manual Volume-I.

2. Legal citations on the subject "Constitution of India" at Sl. Nos. 71-79 in 'Subject Index' of Vigilance Manual Volume-III.

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CHAPTER - III

PRINCIPLES OF NATURAL JUSTICE

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 suit or that 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 must also be seen to be 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 must also be seen to be done.

(d) Final order must be speaking order

Audi Alteram Partem

4. 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

Indian Constitution and Principles of Natural Justice

5. The Indian Constitution does not use the expression "Natural Justice" anywhere. However, the following parts of the Constitution with their respective expressions convey the idea of Natural Justice.

- Preamble: 'Social, Economic and Political' justice, liberty of thought, expression, belief, faith, worship, and equality of status and of opportunity
- Article-14: Equal protection of the law for all citizens of India and equality before law

- Article-21: Right to liberty and life
- Article-22: Provisions of fair hearing for an arrested person
- Article-39-A: Free legal services for disabled and indignant people
- Article-311: Constitutional protection for civil servants
- Article-32, 136, and 226: Constitutional solutions for violations of fundamental rights

6. In essence, the protections granted under Article 311 (2) of the Constitution as well the All India Services (Discipline & Appeal) Rules, 1969 and the A.P. Civil Services (Classification, Control & Appeal) Rules, 1991 are codification of the principles of natural justice. 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".

7. 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.

8. 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 be dismissed. The appeal is dismissed. There shall be no orders as to costs."*

Rule of Bias

9. 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."*

10. 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 harass -ment of women employee

11. Rule of bias must be borne in mind at the time of appointment of Inquiring Authority and dealing with the request of the Charged Officer for change of Inquiring Authority.

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

- Waiver
- Necessity
- Statutory Power

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

Speaking orders

14. 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 minimizes arbitrariness
- Satisfaction of the party
- Enables appellate forum to exercise control

15. Thus 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 Inquiring Authority and requesting for change
- Orders dealing with the request for appointment of a Legal Practioner as Defence Assistant
- Orders dealing with the request for appointment of a person from outstation as 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

16. Components of speaking order and general considerations to be borne in mind while drafting a speaking order are dealt with in the chapter on “Speaking Orders”.

Conclusion

17. Briefly, all these above mentioned rules can be condensed into a dictum of two words: **“Be fair”**.

References :

1. Chapter-XXII in Vigilance Manual (Volume-I)
2. Legal citations on the subject “Principles of Natural Justice” at Sl.Nos.366-373 in ‘Subject Index’ of Vigilance Manual (Volume-III).

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CHAPTER – IV

HANDLING COMPLAINTS

1. What is a complaint?

In vigilance parlance, any source of information about a vigilance misdeed in the organization is a complaint. The Central Vigilance Commission has defined 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, the Commission has given 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 organisation and therefore it was treated and registered as a complaint.

2. What are the Authorities to which complaints may be made?

Complaints charging public servants and the servants under the employ of Government Undertakings / Government Companies and such other institutions, as may be notified by Government from time to time, with corruption, lack of integrity, misconduct, malpractices or misdemeanour may be made to any of the following authorities :

(1) Vigilance Commission;

(2) Secretaries / Principal Secretaries / Special Chief Secretaries to Government and Chief Secretary to Government\ ;

(3) Heads of Departments;

(4) Director General, Anti-Corruption Bureau;

(5) Collectors of the Districts; and

(6) Heads of Government Undertakings, Government Companies and such other Institutions, as may be notified by the Government from time to time.

3. 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.

4. What is Vigilance angle?

The term 'Vigilance angle' has been redefined as formulated by the Central Vigilance Commission and incorporated under para (6) as item (xvii) of Scheme of Vigilance Commission, which is as follows:

(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.

(vi) Other irregularities where circumstances will have to be weighed carefully to take a view whether the officer's integrity is in doubt, 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.

(vii) Any undue / unjustified delay in the disposal of a case, perceived after considering all relevant factors, would reinforce a conclusion as to the presence of vigilance angle in a case.

(viii) Absence of vigilance angle in various acts of omission and commission does not mean that the concerned official is not liable to face the consequences of his actions. All such lapses not attracting vigilance angle would, indeed, have to be dealt with appropriately, as per the disciplinary procedure under the service rules.

(G.O.Ms.No.522, G.A. (Spl.C) Dept., dated 21.07.2007)

5. Register of complaints

The Central Vigilance Commission has prescribed the following Register of Complaints to be maintained in separate columns for Category A and Category B employees.

A. No.	Source of Complaint (See N.B.1)	Date of Receipt	Name and Designation of officer(s) complained against	Reference to file No.	Action taken (See N.B.2)	Date of action	Remarks (See N.B.3)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

N.B:

(1) A Complaint includes all types of information containing allegations of misconduct against public servants, including petitions from aggrieved parties, information passed on to the C.V.O. by C.V.C. and C.B.I. (herein A.P.V.C. and A.C.B.), press reports, findings in inspection reports, audit paras, PAC Reports, etc. In the case of petitions, the name and address of the Complainants should be mentioned in Col.2 and 1 and in other cases, the sources as clarified above should be mentioned.

(2) Action taken will be of the following types: (a) filed without enquiry; (b) filed after enquiry; (c) passed on to other sections

as having no vigilance angle; and (d) taken up for investigation by departmental vigilance agency.

(3) Remarks column should mention (a) and (b).

(a) If there were previous cases / complaints against the same officer, the facts should be mentioned in the "Remarks" column.

(b) Date of charge-sheet issued, wherever necessary.

The above said Register of Complaints may be adopted and maintained by all the CVOs in the Departments of Secretariat, VOs in Heads of Departments, Public Undertakings and District Collectors.

6. How to deal with anonymous and pseudonymous complaints?

Government of Andhra Pradesh in the light of instructions issued by the Central Vigilance Commission decided that no action should at all be taken on any anonymous or pseudonymous petitions or complaints, received against the cadre and non-cadre officers of the State and they must just be filed.

(Circular Memo No.706/Spl.A3/99, G.A. (Spl.A) Dept., dated 28.10.1999).

7. Complaints against public servants of known integrity

A large number of disgruntled and disappointed persons are apt to make serious allegations against public servants out of malice or frustration. Such people generally do not reveal their identity and prefer to file anonymous or pseudonymous complaints even against public servants of known integrity and good repute. Care must, therefore, be exercised in dealing with such petitions.

8. 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. False complainants can be prosecuted under section 182 of the Indian Penal Code and the Court takes cognizance of the offence only on a complaint in writing of the

public servant to whom such a false complaint was made or of some other public servant to whom he is subordinate, as per section 195(1)(a) of Code of Criminal Procedure, 1973. If the person making a false complaint is a public servant, departmental action may also be considered against him as an alternative to prosecution.

The Vigilance Commission advises appropriate action on its own initiative when it becomes aware of malicious, vexatious or totally unfounded complaints against public servants as they would result in harassment and demoralization of the services.

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

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

(a) file it without or after investigation; or

(b) to pass it on to the A.C.B. or V&E or C.I.D. 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 of either on issue of charge-sheet or final decision for closing or dropping the complaint.

References :

1. Chapters- II & VI in Vigilance Manual Volume-I.
2. Circulars on the subject “Handling Complaints” at Sl.Nos.77, 111 & 112 in List of Subject-Cum-Subject Index” in Part-I of Vigilance Manual Volume-II.

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CHAPTER – V

PRELIMINARY INVESTIGATION

1. What is Preliminary Investigation?

Preliminary Investigation, also known as Fact Finding Enquiry, is the process of checking the veracity of a complaint. It can be conducted without employee's involvement and does not follow a prescribed procedure. Fundamental rights, provisions of Art.311 of Constitution and principles of natural justice do not apply to the preliminary investigation.

2. What is the purpose of Preliminary Investigation?

Following are the purposes of Preliminary Investigation:

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

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

Preliminary Investigation may be carried out either departmentally or through A.C.B., V&E and 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 enquiry within the department/office should be investigated departmentally.

5. What are the cases to be referred to A.C.B., V&E, C.I.D. and Police Authorities?

As per the Vigilance Manual, the following types of cases are to be referred to A.C.B., V&E, C.I.D. and Police Authorities:

(a) The Anti Corruption Bureau investigates offences under the Prevention of Corruption Act, 1988 (as amended by Act 16 of

2018). However, misappropriation of public funds coming to light in the course of investigation of a case under the Prevention of Corruption Act, 1988 will be investigated by the A.C.B. under the relevant sections of I.P.C.

(b) Offences under the Indian Penal Code, 1860 committed by Public Servants under sections like 166, 167, 168, 169, 217, 218, 219, 409, 420, 468, 477A, the more important of which are criminal breach of trust, misappropriation, forgery and falsification of accounts, relating to Public Servants referred to above are to be investigated by the local police for which a complaint is to be made to the Station House Officer concerned.

(c) The cases of misappropriation of public funds in which a prima facie case has been made out may be referred to the C.I.D. for investigation depending on the seriousness of the offence. Any reference of such a case to the C.I.D. shall be done in consultation with the Home Department in Secretariat.

(d) The Vigilance & Enforcement Department conducts enquiries / investigations pertaining to (i) prevention of leakage of revenues; (ii) detection of misuse or wastage of Government funds and resources; (iii) prevention of loss of State's wealth and natural resources; and (iv) prevention of losses / wastage and graft in Public Sector Undertakings and Government Companies.

6. Can a case be simultaneously investigated by the Department as well as A.C.B.?

No. Parallel investigation should be avoided. Once a case has been referred to and taken up by the A.C.B. 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 A.C.B. 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 A.C.B. to investigate those allegations,

which are the subject matter of the departmental inquiry proceedings, unless the A.C.B. apprehends criminal misconduct on the part of the official(s) concerned.

7. 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.

8. 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.

9. 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 to contact 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 memorandum 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) 1 SCC 283, 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."*

10. 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.

11. 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 A.C.B. or C.I.D., as the case may be.

12. 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 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.

13. 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 July 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 Sri……. 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 Sri .... 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

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

As per the norms of C.V.C. preliminary investigation to be completed within three months. Preliminary investigation on Government servants about to retire should be completed urgently and priority should be given to enquiries / investigations on suspended Government servants to minimize their suspension period.

15. What action to be taken, if the Government servant resigns pending preliminary investigation?

Resignations from officers facing enquiry / investigation should generally be not accepted. However, the acceptance of resignation is considered not detrimental to public interest if the offences do not involve moral turpitude or the evidence is not strong enough to justify the assumption. If the proceedings are likely to be so protracted that it would be cheaper to the public exchequer to accept the resignation. The Competent Authority should decide taking all aspects and circumstances into consideration.

References:

1. Chapter-VII in Vigilance Manual Volume-I.
2. Legal citations on the subject “Preliminary Enquiry” at Sl. Nos. 120, 235, 359, 360, 361 in ‘Subject Index’ of Vigilance Manual Volume-III.

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CHAPTER – VI

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 18 (Chapter – VI) of the Vigilance Manual-I provides that if a complaint is, after verification, found to be false, malicious or vexatious, there should be no hesitation in launching criminal prosecution against such complainants.

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.

A false complainant can be prosecuted under section 182 I.P.C. and the Court takes cognizance of the offence only on a complaint in writing of the public servant to whom such a false complaint was made or of some other public servant to whom he is subordinate, as per section 195 (1) (a) Cr.P.C.

3. What is the role of A.P.V.C. in making decisions on Preliminary Investigation Reports?

The Vigilance Commission will process the report and tender advice on the same which may be to drop action where there is no material at all; or to take departmental action for major penalty proceedings or minor penalty proceedings, and in the case of major penalty proceedings, to entrust the case for inquiry to the Commissionerate of Inquiries or have an inquiry conducted by the department itself.

The Vigilance Commission may also advise to consider immediate suspension of the officer or his transfer to a non-focal post forthwith having regard to the facts and circumstances of the case, as revealed in the preliminary report. In disproportionate assets cases, Commission will also advise the Department on the attachment of properties pending Final Report.

All cases of misconduct on the part of public servants involving lack of integrity which have a vigilance angle viz. illegal gratification, bribery, causing loss to Government and unlawful gain to self or others and such other acts of corruption and criminal misconduct like misappropriation, cheating, fraud etc. should be referred to the Vigilance Commission for its advice. Other cases of misconduct involving administrative lapses which have no vigilance angle, need not be referred to Commission for its advice. In the event of doubt whether a case has a vigilance angle or not, may be decided at the level of Secretary to Government of the Department concerned. Andhra Pradesh Vigilance Commission, will however, continue to be at liberty to call for any file at any time. (Cir. Memo.No.664/Spl.C/A1/2004- 1, G.A. (Spl.C) Dept., dt.06.12.2004)

References:

Chapters-II, VI & VIII in Vigilance Manual Volume-I.

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CHAPTER – VII

CONSULTATION WITH A.P. VIGILANCE COMMISSION

1. What is the origin and present status of A.P. Vigilance Commission (APVC)?

Government issued the Scheme of the Vigilance Commission defining its powers, functions and jurisdiction, by G.O.Ms.No.421, G.A. (SC.D) Dept., dt.03.08.1993 and amended by G.O.Ms.No.451, G.A. (Spl.B) Dept., dt.05.11.2002.

The Vigilance Commission has jurisdiction and powers throughout the State of Andhra Pradesh in respect of matters to which the executive power of the State extends, to check, prevent and eradicate corruption in the public services and to deal with any complaint, information or case that public servants, including members of All India Services, had exercised or refrained from exercising their powers, for improper or corrupt purposes and any complaint of corruption, misconduct, lack of integrity or other kinds of malpractices or misdemeanor on the part of the public servants.

The Vigilance Commissioner is responsible for the proper performance of the duties and responsibilities assigned to the Commission from time to time and for generally coordinating the work and advising the Departments, Government Undertakings, Government Companies and such other Institutions as may be notified by the Government from time to time, in respect of all matters pertaining to the maintenance of integrity and impartiality in the administration.

2. What is the composition of the A.P. Vigilance Commission?

In terms of the provisions made in the Scheme of Vigilance Commission, the Commission shall consist of a Vigilance Commissioner. In exercise of its powers and functions, the Vigilance Commission will not be subordinate to any Department and will have the same measure of independence and autonomy as the Andhra Pradesh Public Service Commission.

3. What is the mode of appointment of the A.P. Vigilance Commissioner?

The Vigilance Commissioner shall be appointed by the Governor by a warrant under his / her hand and seal and shall not be removed or suspended from the office except in the manner provided for the removal or suspension of the Chairman or a Member of the Public Service Commission.

4. What are the functions and powers of A.P. Vigilance Commission?

(i) to cause an enquiry into any transaction in which a public servant including a member of an All India Service is suspected or alleged to have acted for an improper purpose or in a corrupt manner.

(ii) to cause an enquiry or an investigation to be made into:

(a) any complaint that a public servant had exercised or refrained from exercising his powers for improper or corrupt purposes;

(b) any complaint of corruption, misconduct or lack of integrity or other kinds of malpractices or misdemeanour on the part of a Public Servant.

Corruption in this context has the same meaning as criminal misconduct in the discharge of official duties under the provisions of the Prevention of Corruption Act, 1988 (Central Act No.49 of 1988).

(iii) to call for records, reports, returns and statements from all Departments/ Government Undertakings / Government Companies / and such other Institutions as may be notified by the Government from time to time so as to enable the Commission to exercise a general check and supervision over the Vigilance and Anti-Corruption work.

(iv) to take over under his / her direct control such complaints, information or cases, as he / she may consider necessary for further action, which may be either:-

(a) to ask the Anti-Corruption Bureau to register a regular case and investigate it;

or

(b) to entrust the complaint, information or case for enquiry:

(1) to the Anti-Corruption Bureau

or

(2) to the Department / Government Undertaking / Government Company concerned and such other Institutions, as may be notified by the Government from time to time.

(v) In cases referred to in paragraph (iv)(b)(1) and also in all other cases, where the Anti-Corruption Bureau has made enquiries including suo-motu enquiries, the preliminary report of the enquiry will be forwarded by the Anti-Corruption Bureau to the Vigilance Commission. A copy may be sent by the Bureau to the General Administration (SC.F) Department and the concerned Department/Government Undertaking/Govt. Company and such other Institution, as may be notified by the Government from time to time. The Vigilance Commission will consider whether or not a regular enquiry is called for. If a regular enquiry is considered necessary by the Vigilance Commission against Public Servants other than those concerning members of the All India Services and Heads of Departments, it will authorise the Bureau to conduct a regular enquiry under intimation to the General Administration (SC.F) Dept., and the concerned Dept. / Government Undertaking / Government Company and such other Institutions, as may be notified by the Government

from time to time. If, however, a regular enquiry is not considered necessary, the Commission will advise the Department / Govt. Undertaking / Government Company / such other Institutions, as may be notified by the Government from time to time, concerned as to further action. In cases taken up by the Anti-Corruption Bureau suo-motu in which the finding of the Bureau is that there is no basis to proceed further in the matter, the preliminary / discreet enquiry reports shall be forwarded to the Vigilance Commission while marking copies to the General Administration (SC.F) Department in duplicate for advice.

(G.O.Ms.No.424, G.A. (SC.D) Dept., dt.26.08.1994)

In respect of cases concerning members of the All India Services and Heads of Departments, if a regular enquiry is considered necessary by the Commission, it will authorise the Bureau to conduct a regular enquiry only after consultation with the Chief Secretary to Government under intimation to the General Administration (SC.D) Dept., and Department of Secretariat concerned. If, however, no regular enquiry is considered necessary, the Commission will advise the Chief Secretary to Government for further action.

The final report of the enquiry by the Bureau in all cases will be forwarded to the concerned Department / Govt. Undertaking / Govt. Company and such other Institution as may be notified by the Government from time to time through the Vigilance Commission provided that such reports against the Members of All India Services, and Heads of Departments will be forwarded to the Chief Secretary to Government through the Commission so that on a consideration of the report and other relevant records it may advise the concerned Department / Govt. Undertaking / Govt. Company and such other Institutions as may be notified by the Government from time to time /

Chief Secretary to Government, as the case may be, as to further action. A copy of report of the enquiry will be sent by the Bureau to the General Administration (SC.F) Dept., and the concerned Department / Govt. Undertaking / Government Company and such other Institutions as may be notified by the Government from time to time / Chief Secretary to Government, as the case may be.

In cases referred to in paragraph (iv)(b)(2), the report of the enquiry by the Department / Government Undertaking / Government Company and such other Institutions, as may be notified by the Government from time to time will be forwarded to the Vigilance Commission for its advice as to further action.

(vi) Further action on the final reports of the Anti-Corruption Bureau, Government Department / Govt. Undertaking / Govt. Company and such other Institutions as may be notified by the Government from time to time, as the case may be, will be as follows:-

i. Prosecution in a Court of Law.

ii. Enquiry by the Commissioners for Departmental Inquiry, as may be appointed by Government.

iii. Departmental Inquiry otherwise than by the Commissioners for departmental Inquiry.

(vii) The Anti-Corruption Bureau will forward the final reports in all cases investigated by the Bureau in which it considers that a prosecution should be launched to the Department / Govt. Undertaking / Govt. Company and such other Institution as may be notified by the Government from time to time concerned through the Vigilance Commission and simultaneously send a copy to the General Administration (SC.F) Department and to the Department / Govt. Undertaking/Govt. Company and such other Institutions as may be notified by the Government from time to time

concerned for any comments within 21 days from the date of receipt of the report by the Department / Govt. Undertaking/Govt. Company / and such other institution as may be notified by Government from time to time, which the latter may wish to forward to the Commission. However, the time stipulation of 21 days will not apply to the cases of trap, for which separate time line of 3 days is fixed. (G.O.Ms.No.25, G.A. (SC.F) Dept., dt.24.02.2023)

(viii) The Commission after examining the case and considering any comments received from the concerned disciplinary authority will advise the concerned department / Government Undertaking / Govt. Company and such other Institutions as may be notified by the Government from time to time with a copy to the G.A. (SC.F) Dept., whether or not prosecution should be sanctioned. Orders will thereafter be issued by the concerned Administrative Department in the Government in the cases of all Gazetted Officers and Non Gazetted Officers and Govt. Undertaking / Govt. Company and such other Institutions as may be notified by the Government from time to time, as the case may be. A copy of the final orders issued by the Government / Govt. Undertaking / Govt. Company and such other Institutions as may be notified by the Government from time to time shall in all such cases be furnished to the Commission.

(ix) The Government in consultation with the Commission prepares a panel of Commissioners for Departmental Inquiry for all Departments. The Commission may advise the Government to refer to one of the Commissioners for conducting an inquiry against a Public Servant. The Final report of the Commissioner shall be referred to the Vigilance Commission for advice. The Government Department concerned after consideration of the Report of the Commissioner for Departmental Inquiries and advice of the Vigilance Commissioner thereon will issue final orders imposing the penalty under A.P. Civil Services

(CC&A) Rules or All India Services (D&A) Rules. A copy of the final orders issued by the Government will in all such cases be furnished to the Commission for record.

(x) The Commission having regard to the facts of a particular case may advise the Government or the Govt. Undertaking / Govt. Company / such other Institutions as may be notified by the Government from time to time to have the inquiry conducted departmentally otherwise than by the Commissioner for Departmental Inquiries. The final report of such Departmental inquiry shall be referred to the Vigilance Commission for advice. The Government Department concerned after consideration of such report and the advice of the Vigilance Commissioner thereon will issue final orders imposing the penalty under the A.P.C.S. (CC&A) Rules. A copy of the final orders issued shall in all such cases be furnished to the Commission for Record.

(xi) In any case, where it appears that the discretionary powers had been exercised for improper or corrupt purposes, the Commission will advise the Department / Govt. Undertaking / Govt. Company and such of the Institutions as may be notified by the Government from time to time that suitable action may be taken against the Public Servant concerned and if it appears that the procedure or practice is such as affords scope or facility for corruption or misconduct, the Commission may advise that such procedure or practice be appropriately changed or altered in a particular manner.

(xii) The Commission may initiate at such intervals, as it considers suitable review of the procedure and practice of Administration in so far as they relate to the maintenance of integrity in the Administration in all departments of administration.

(xiii) The Commission may collect such statistics and other information as may be necessary.

(xiv) The Commission may obtain information about action taken on its recommendations.

5. What is the procedure for appointment of Chief Vigilance Officers & Vigilance Officers?

There will be one Chief Vigilance Officer for each Secretariat Department and Vigilance Officers in all subordinate and attached offices and in all Government Undertakings / Government Companies, as may be notified by the Government from time to time. The Chief Vigilance Officer may not be lower in rank than the Deputy Secretary to Government and the Vigilance Officer shall be selected from among the senior officers of the Department. The Chief Vigilance Officers and the Vigilance Officers in subordinate and attached offices shall be appointed in consultation with the Vigilance Commission. No person whose appointment as C.V.O. is objected to by the Commission shall be so appointed.

6. Who are the Chief Vigilance Officers at District level?

Collectors of Districts shall be the Chief Vigilance Officers within their jurisdiction.

7. What are the cases having vigilance angle?

All cases of misconduct on the part of public servants involving lack of integrity which have a vigilance angle viz. illegal gratification, bribery, causing loss to Government and unlawful gain to self or others and such other acts of corruption and criminal misconduct like misappropriation, cheating, fraud etc., should be referred to the Vigilance Commission for its advice. Other cases of misconduct involving administrative lapses which have no vigilance angle, need not be referred to Commission for its advice. In the event of doubt whether a case has a vigilance angle or not, may be decided at the level of Secretary to Government of the Department concerned. The Andhra Pradesh Vigilance Commission, will however, continue to be at liberty to call for any file at any time. (Cir. Memo.No.664/Spl.C/A1/2004-1, G.A. (Spl.C) Dept., dt.06.12.2004).

Furthermore, the term 'vigilance angle' is re-defined in G.O.Ms.No.522, G.A. (Spl.C) Dept., dated 21.07.2007 as follows:

(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.

(vi) Other irregularities where circumstances will have to be weighed carefully to take a view whether the officer's integrity is in doubt, 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.

(vii) Any undue / unjustified delay in the disposal of a case, perceived after considering all relevant factors, would reinforce a conclusion as to the presence of vigilance angle in a case.

(viii) Absence of vigilance angle in various acts of omission and commission does not mean that the concerned official is not liable to face the consequences of his actions. All such lapses not attracting vigilance angle would, indeed, have to be dealt with appropriately, as per the disciplinary procedure under the service rules.

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

Vigilance Commission's advice shall be sought on the course of action to be taken on all the preliminary enquiry reports on allegations of corruption enquired into internally by the Chief Vigilance Officer / Vigilance Officer, Departmental Authorities or Public Enterprises or Autonomous Bodies including cases enquired into by the Anti-Corruption Bureau, whether to launch criminal proceedings or to institute departmental action for imposition of a major penalty, whether the inquiry should be entrusted to the Commissionerate of Inquiries or other departmental Inquiry Officer or to drop action at the stage

9. What is the procedure for seeking the second stage advice?

The Department should obtain the advice of the Vigilance Commission after conclusion of the departmental inquiry on the delinquency of the charged officer and the penalty to be imposed, if any, on him both before arriving at a provisional conclusion and after receipt of the representation of the Government servant/employee thereon. Thus the advice of the Vigilance Commission should be obtained both before arriving at the provisional conclusion and after receiving the representation of the charged official. (U.O.Note No.1007/SC.E/97-1 G.A. (SC.E) Dept. dt.09.05.97; U.O.Note No.2670/SC.E3/98-1, G.A. (SC.E) Dept., dt.02.12.98; Cir.Memo.No.233/Spl.C/A1/2005-1, G.A. (Spl.C) Dept., dt.28.04.2005; U.O.Note No.941101/Ser.C/2019, G.A. (Ser.C) Dept., dt.11.09.2019)

10 What is the procedure for deviating with the advice of the Vigilance Commission?

Where it is proposed to deviate from the advice of the Vigilance Commission, the case should be circulated to the Chief Minister through the Chief Secretary and the Minister concerned. (Item No. 14 in cases to be placed before the Chief Minister in Third Schedule in A.P. Govt. Business Rules r/w instruction 69 of Secretariat Instructions)

Whenever the Competent Authority proposes to deviate from the advice of Vigilance Commissioner, reasons should be recorded in

writing for not granting sanction of prosecution in the form of a speaking order. (Cir.Memo.No.785/Spl.C/A1/2010, G.A. (Spl.C) Dept., dt.08.02.2011).

11. Why there is need of sanction for prosecution?

Under Section 19 of the Prevention of Corruption Act, 1988 (as amended by Act 16 of 2018), 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, 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 MoS / Public Servant, who in the course of strict and impartial discharge of his duties may offend persons and create enemies, from frivolous, malicious or vexatious 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'

In respect of retired MoS / Government Servants also, there is a need for sanction for prosecution under Section 19 (1) (b) of the Prevention of Corruption Act, 1988 (as amended by Act 16 of 2018).

Sanction is to be accorded by the authority competent to remove the delinquent from service or the authority competent to withhold pension or gratuity or both in respect of retired MoS / Public Servants.

12. What is the procedure for withdrawal of cases?

The advice of the Vigilance Commission should be obtained and considered before taking a final decision whenever it is proposed to withdraw a case of prosecution (including cases of misappropriation)

before a court of law and cases before the departmental inquiring authority. (U.O.Note No.314/SC.D/94-3, G.A. (SC.D) Dept., dt.07.06.1994; U.O.Note No.1166/SC.D/94-1, G.A. (SC.D) Dept., dt.13.10.1994)

13. Is the advice of the Vigilance Commission a privileged document?

Vigilance Commission's advice is privileged document and the same should be kept confidential in safe custody and handled with care to avoid misplacement. Where a reference to the advice of the Vigilance Commission becomes necessary, it should not be mentioned that the decision was taken "as advised by the Vigilance Commission", but "after considering the advice of the Vigilance Commission".

14. Is it necessary to obtain advice of Vigilance Commission on Judgments?

It is not necessary for the Commission to tender advice on judgments of criminal courts and it is for the Government to take a decision in consultation with the Law Department. (Memo.No.1994/SC.D/77-1, G.A. (SC.D) Dept., dt.07.10.1977; U.O.Note No.503/Spl.C/A1/2009, G.A. (Spl.C) Dept., dt.09.10.2009)

15. What are the administrative functions of the Vigilance Commissioner as Chairperson of Commissionerate of Inquiries?

(1) Allocation of business among Members of Commissionerate of Inquiries.

(2) Review of work of Members of Commissionerate of Inquiries from time to time.

(3) Sanction of leave such as C.L. etc. to Members.

(4) Re-allocation of staff in the Commissionerate among various Members of the Commissionerate of Inquiries.

(5) General Coordination with General Administration Department.

(6) Nominate some other Inquiring Authority, whenever representations are received for change of Members of C.O.I., if the charged officers have any grievance.

(7) Issue clarifications to various departments whenever they wanted clarification.

(8) The Registry of the Commissionerate will be under the control of A.P.V.C.

(G.O.Ms.No.336, G.A. (Spl.C) Dept., dt.19.10.2004)

References:

Chapter-II in Vigilance Manual Volume-I.

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CHAPTER – VIII

SUSPENSION

1. What is suspension?

Suspension is a temporary deprivation of office. The contract of service is not terminated. However, the MoS / Govt. servant placed under suspension is not allowed to discharge the functions of his office during the period of his / her suspension. It is not a penalty under the All India Services (Discipline & Appeal) Rules, 1969. But, the suspension is listed as minor penalty under Rule 9 (v) (a) of A.P. Civil Services (CC&A) Rules, 1991, 'where a person has already been suspended under Rule 8 to the extent considered necessary'. It is only an intermediate step. However, it visits the MoS / Govt. servant with civil consequences. An appeal lies against the order of suspension (under Rule 16 (i) of the A.I.S. (D&A) Rules, 1969 or under Rule 33 (1) (i) of A.P.C.S. (CC&A) Rules, 1991) and the MoS / Govt. servant is entitled to receive subsistence allowance during the period of suspension.

2. Who can suspend? (Rule 3 of A.I.S. (D&A) Rules, 1969 / Rule 8 of A.P.C.S. (CC&A) Rules, 1991)

(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) The following authorities are empowered to place a MoS (AIS) / Govt. servant under suspension:

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

(ii) Disciplinary Authority.

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

(3) Where the State Government passes an order placing under suspension a MoS (AIS), whom disciplinary 0proceedings are contemplated, such an order shall not be valid unless before the expiry of a period of thirty days from the date from which the MoS is placed under suspension, or such further period not exceeding thirty days as may be specified by the Central Government for reasons to be recorded in writing, either disciplinary proceedings are initiated against him / her or the order of suspension is confirmed by the Central Government**.** [3rd proviso to Rule 3 (1) of AIS (D&A) Rules, 1969.

(4) Persons on deputation- [Rule 30 of A.P.C.S. (CC&A) Rules, 1991]

Where the services of a Government servant are lent by one department to another department or to the Government of India or the Government of another State, the borrowing authority shall have the powers of the Appointing Authority for the purpose of placing such Government servant under suspension and of the Disciplinary Authority for the purpose of conducting a disciplinary proceedings against him. The borrowing authority shall forthwith inform the authority which lent the services of the Government (lending authority) of the circumstances leading to the order of suspension of such Government servant.

3. When can a Member of Service / Government servant be placed under suspension?

(1) A Government servant may be placed under suspension under the following situations [Rule 8 (1) of A.P.C.S. (CC&A) Rules, 1991]:

(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;

(iv) In some cases, even if the offence for which he / she was charged does not have bearing on the discharge of his / her official duties.

(2) A Member of Service may be placed under suspension under the following situations [Rule 3 of A.I.S. (D&A) Rules, 1969]:

(i) if, having regard to the circumstances in any case and, where articles of charge have been drawn up, the nature of the charges, the Government of a State or the Central Government, as the case may be, is satisfied that it is necessary or desirable to place under suspension a member of service, against whom disciplinary proceedings are contemplated or are pending; or

(ii) if the Government of a State or the Central Government, as the case may be, is of the opinion that a Member of the Service has engaged himself in activities prejudicial to the interests of the security of the State; or

(iii) A member of the Service in respect of, or against, whom an investigation, inquiry or trial relating to a criminal charge is pending may, at the discretion of the Government be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as a Member of the Service or is likely to embarrass him in the discharge of his duties or

involves moral turpitude [Rule 3 (3) of A.I.S. (D&A) Rules, 1969]

(3) Public interest should be the guiding factor in deciding whether or not a Member of Service / Government servant, including 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.

(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 Member of Service / 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 Member of Service / Government Servant is likely to seriously subvert discipline in the office in which he is working;

(iii) Where the continuance in office of the Member of Service / 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 Member of Service / 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;

(5) In the circumstances mentioned below, it may be considered desirable to suspend a Member of Service / 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.

4. Deemed Suspension

(1) Deemed suspension is a case when a Member of Service / 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 falls under two categories:

i. during the service period [Rule 3 (2) & 3 (4) of A.I.S. (D&A) Rules, 1969 / Rule 8 (2) of A.P.C.S. (CC&A) Rules, 1991]; and

ii. in respect of the period when the Member of Service / Government servant ceased to be in service [Rule 3 (5) & (6) of A.I.S. (D&A) Rules, 1969 / Rule 8 (3) & (4) of A.P.C.S. (CC&A) Rules, 1991].

(2) Rule 3 (2) & 3 (4) of A.I.S. (D&A) Rules, 1969 & Rule 8 (2) (a) & 8 (2) (b) of A.P.C.S. (CC&A) Rules, 1991:

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).

(3) Member of Service / Government servant to intimate his arrest / conviction:

Although the Police Authorities / Investigating Agencies will send prompt intimation of arrest and / or release on bail etc. of a Member of Service / 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 Member of Service / 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. [Para12.3. – Chapter – XXIV – Vigilance Manual Volume-I]

(4) Rule 3 (5) of A.I.S. (D&A) Rules, 1969 & Rule 8 (3) of A.P.C.S. (CC&A) Rules, 1991 -order of dismissal, removal compulsory retirement set aside on Appeal or Review:

When a Member of Service / Govt. servant already under suspension is dismissed, removed or compulsorily retired but such punishment is set aside on appeal or review and further inquiry 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 Member of Service / 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.

(5) Rule 3 (6) of A.I.S. (D&A) Rules, 1969 & Rule 8 (4) of A.P.C.S. (CC&A) Rules, 1991 - Court setting aside the order of compulsory retirement, removal, dismissal:

A Member of Service / 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 inquiry into the case, then such Member of Service / 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.

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

(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 3 (7) (c) of A.I.S. (D&A) Rules, 1969 & Rule 8 (5) (c) of A.P.C.S. (CC&A) Rules, 1991].

(2) An order of suspension of the Government servant shall be reviewed by the Review Committee constituted at an interval of every six months. The appropriate reviewing authority should take a decision regarding continuance or otherwise of the employee concerned under suspension, with reference to the nature of charges, where delay in finalization of enquiry proceedings cannot be attributed to the employees or when there is no interference from the employees in facilitating the enquiry. An outer limit be provided as two years from the date of suspension, failing which the Govt. servant may have to be reinstated without prejudice to the proceedings being pursued. However, in exceptional cases, considering the gravity of the charges, one could be continued under suspension even beyond a period of two years, especially in cases where there is deliberate delay caused due to non-cooperation of the employee concerned.

(3) In respect of A.I.S. Officers, an order of suspension made or deemed to have been made, by the Government of a State under this rule, detailed report of the case shall be forwarded to the Central Government within a period of fifteen days of the date on which the Member of Service is suspended or is deemed to have been suspended, as the case may be. An order of suspension which has not

been extended shall be valid for a period not exceeding (60) days and an order of suspension which has been extended shall remain valid for a further period not exceeding (120) days, at a time unless revoked earlier. The period of suspension may, on the recommendations of the concerned Review Committee, be extended for a further period not exceeding (180) days at a time. Where no order has been passed under Clause (d) of Sub-rule (8) of Rule 3 of A.I.S. (D&A) Rules, 1969, the order of suspension shall stand revoked with effect from the date of expiry of the order being reviewed.

6. Format of the order of suspension:

(1) A Government servant can be placed under suspension / deemed suspension only by a specific order in writing by the Competent Authority. Standard forms in which the order should be made is given in Forms 1 to 4 in Part-II of the Vigilance Manual – Volume-II.

(2) Standard forms in which the order should be made in respect of A.I.S. Officers, is given in “SCHEDULE 2” of A.I.S. (D&A) Rules, 1969.

(3) Formats may have to be modified to fully meet the requirements of the individual case.

(4) Copy of the order should be endorsed to the A.P.V.C. also in cases involving a vigilance angle in respect of MoS / Govt. Servant in whose case the advice of Commission advice is necessary.

7. Date of effect of order of suspension:

(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.

(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.

(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 Member of Service / 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 Member of Service / Government servant concerned.

(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.

(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.

8. Subsistence allowance:

(1) A Member of Service / 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 in case of State Government servants and Rule 4 of A.I.S. (D&A) Rules in case of members of All India Services. The order for subsistence allowance should be passed simultaneously with the order of suspension. The formats of the suspension order in various scenarios are also amended duly incorporating the provision to issue orders for payment of subsistence allowance (Forms 1 to 4 in Part – II of the Vigilance Manual Volume-II)

(2) If the period of suspension exceeds three months, the amount of subsistence allowance may be increased or decreased upto a maxi1mum 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. It is obligatory to take such action before the expiry of the first three months. But, the amount of subsistence allowance shall be restricted to 50% in all cases where a prima-facie case is established on charges of corruption, misappropriation and demand or acceptance of illegal gratification until finalization of the disciplinary cases. (Rule 53 of Fundamental Rules)

9. Speedy investigation into cases in which an officer is under suspension :

(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.

(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 be revoked and if so the officer shall be posted in a far-off place in a non-focal post.

(3) When an officer is suspended either at the request of the A.C.B./C.I.D. or on the Department's own initiative in regard to a matter which is under investigation or inquiry by the A.C.B./C.I.D. or which is proposed to be referred to A.C.B./C.I.D., a copy of the suspension order should

be sent to the A.C.B./C.I.D. concerned. To reduce the time-lag between the placing of an officer under suspension and the reference of the case to the A.C.B./ C.I.D. for investigation such cases should be referred to them promptly after suspension orders are passed if it is not possible to refer to them before the passing of suspension orders.

(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 to review the 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/Member of Service;

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 before the maximum suspension period of two years; and

d) Whether having regard to the guidelines stated in paragraph (2) above regarding the circumstances in which a Government servant may be placed under suspension, the suspension may be revoked and the Government servant /Member of Service shall be posted in a far-off place in a non-focal post.

In cases of suspension being revoked and the Government servant / Member of Service 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.

10. Reasons for suspension to be communicated:

A Member of Service / Government servant placed under suspension has a right of appeal under Rule 16 (i) of the A.I.S. (D&A) Rules, 1969 / under Rule 33 (i) of A.P.C.S. (CC&A) Rules, 1991. This would imply that he/she should generally know the reasons leading to his/her suspension. In cases when a Member of Service / Government servantis 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 Member of Service / Government servant would be aware of the reasons leading to his suspension.

11. Jurisdiction of Election Commission over Members of Service / Government servants deputed for election duties for ordering suspension and recommending disciplinary action:

(1) One of the issues in Writ Petition (C) No.606/1993 in the matter of Election Commission vs. Union of India & 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:-

(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) Government of India 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.

(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 / State 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.

(4) It is not necessary to amend the disciplinary 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.

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

It shall be mandatory for the Disciplinary Authority to consult the Election Commission if the matter is proposed to be closed 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.

13. Headquarters of a MoS / Govt. Servant under suspension:

The Headquarters of a MoS / 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 headquarters 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.

14. Resignation during the suspension:

When a MoS / 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.

15. Regularisation of the period of suspension:

(1) Provisions relating to regularization of the period of suspension are contained in Fundamental Rules (FR) 54,

54A and 54 B for State Government servants and Rules 5, 5A and 5B of A.I.S. (D&A) Rules, 1969 for members of All India Services. Broadly, the provisions are:

a) Admissibility of pay and allowances and treatment of service on reinstatement after dismissal, removal or compulsory retirement as a result of appeal or review

b) Admissibility of pay and allowances and treatment of service on reinstatement where dismissal, removal or compulsory retirement is set aside by a Court of Law

c) Admissibility of pay and allowances and treatment of Service on reinstatement after suspension

(2) Where the MoS / Govt. servant who was under suspension is fully exonerated in a departmental proceeding or acquitted by the Court in a Criminal Trial on merits, the period of suspension is considered as wholly unjustified. The period is treated as 'on duty' for all purposes and he is paid full pay and allowances for the period of suspension deducting the subsistence allowance already drawn by him.

(3) In cases where it is decided to treat the suspension period as 'not on duty', both the A.I.S. (D&A) Rules, 1969 and Fundamental Rules, provide for treatment of suspension period as leave due and admissible at the request of the MoS / Govt. servant.

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

(5) The fundamental difference between A.I.S. (D&A) Rules, 1969 and Fundamental Rules is that in case of members

of All India Services, the suspension period is treated as on duty and balance of full pay and allowances shall be paid even if the appellate / reviewing authority or the Courts set aside the dismissal, removal or compulsory retirement on the ground of non-compliance with the requirements of clause (1) or clause (2) of article 311 of the Constitution and no further inquiry is proposed to be held; but in case of State Govt. Servants, under the same circumstances, the suspension period is treated as 'not on duty' and the payment is limited to the subsistence allowance entitled / already paid under FR 53.

16. Retirement on superannuation:

On attaining the age of superannuation, a MoS / Govt. servant will be retired even if he / she is placed under suspension. He / She will not get subsistence allowance but will draw provisional pension in terms of sub-rule (2) of Rule 6 of A.I.S. (DCRB) Rules, 1958 / Rule 52 of A.P. Revised Pension Rules, 1980.

17 Continuance of Suspension when another disciplinary proceedings commences [Rule 3 (7) (b) of A.I.S. (D&A) Rules, 1969 & Rule 8 (5) (b) of A.P.C.S. (CC&A) Rules, 1991]:

Where a Member of the Service/Government servant is suspended or is deemed to have been suspended, whether in connection with any disciplinary proceeding or otherwise, and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.

This rule is important since without recording any reasons, if the Govt. Servant is continued under suspension because of any other disciplinary proceeding, he may have to be reinstated and paid full back wages if he gets acquitted in 1st case.

(Union of India vs. R.C.Bakshi on 26 February, 2015 in Delhi High Court)

18. Can the Disciplinary Authority grant leave to a MoS / Govt. servant under suspension?

Leave may not be granted to a MoS / Govt. servant under suspension [FR.55 of Compilation of F.R. & S.R. (GOI) & F.R.&S.R. (AP)]

References:

1. The A.I.S. (D&A) Rules, 1969.
2. The A.P.C.S. (CC&A) Rules, 1991.
3. Chapter-XXIV (Suspension) in Vigilance Manual Volume-I.
4. Circulars on the subject “Suspension” at Sl.Nos.283-319 in List of Subject-Cum-Subject index” in Part-I of Vigilance Manual Volume Volume-II.
5. Forms on the subject “suspension” at Sl.Nos.1-9 in Part-II (Forms) of Vigilance Manual Volume-II.
6. Legal citations on the subject “Suspension” at Sl.Nos.434-459 in “Subject Index” of Vigilance Manual Volume-III.

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CHAPTER – IX

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:

Firstly, minor penalties are lighter penalties whereas major penalties are heavier penalties.

Secondly, minor penalties have temporary effect on the monetary benefits viz. increments of pay etc. During the currency of minor penalty, the individual shall not be considered for promotion / appointment by transfer to a higher post. If any junior is promoted during the said period, the individual can loose his / her original seniority. In addition to the above effect on promotion/ seniority, major penalties have permanent effect on the monetary benefits and also result in deprivation of the benefits / position enjoyed by the delinquent such as loss of employment, etc.

Thirdly, major penalties can be imposed only after conducting a detailed oral hearing as provided for under Rule 8 of A.I.S. (D&A) Rules, 1969 and Rule 20 of A.P.C.S. (CC&A) Rules, 1991, 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 14 of A.I.S. (D&A) Rules, 1969 and Rule 25 of A.P.C.S. (CC&A) Rules, 1991. 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 under which detailed oral hearing is held for imposition of minor penalty fall under two broad categories viz. optional and obligatory.

(a) Rule 10 (1) (b) of the A.I.S. (D&A) Rules, 1969 and Rule 22 (1) (b) of A.P.C.S. (CC&A) Rules, 1991 provide that even for imposing a minor penalty, detailed oral hearing as provided for in Rule 8 (4) to 8 (23) and Rule 20 (3) to 20 (18) of said rules respectively 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-motto or based on the request of the delinquent. The charged officer, however, has no right to demand that an inquiry should be held (Para 1 in Chapter XXVI of Vigilance Manual (Vol.I) . 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 clause (b) of sub-rule (1) of Rule 10 of the A.I.S. (D&A) Rules, 1969 and sub-rule (2) of Rule-22 of A.P.C.S. (CC&A) Rules, 1991, it is mandatory to conduct detailed oral hearing provided for in Rule 8 (4) to 8 (23) and Rule 20 (3) to 20 (18) of the said rules respectively, after considering the representation of the delinquent employee, if it is proposed:

(i) 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) to impose the penalty of withholding of increments of pay for a period exceeding three years;

In cases, where it is decided to hold an inquiry, the procedure to be followed will be the same as prescribed for an inquiry in a case in which a major penalty is proposed to be imposed right from framing of AoCs. A standard proforma is prescribed for issue for initiation of minor penalty proceedings in cases where

the disciplinary authority decides to hold the inquiry. (Form No.15 of Part II of Vigilance Manual Volume-I)

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."

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 in case of A.I.S. Officers. 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 misbehaviour;

(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 8 of the A.I.S. (D&A) Rules, 1969 and Rule 20 of A.P.C.S. (CC&A) Rules, 1991 for imposition of major penalty, if the disciplinary authority feels that minor penalty is adequate to meet the ends of justice. In such case, the reasons / circumstances for awarding minor penalty in place of major penalty is to be recorded clearly by the disciplinary authority. On the other hand major penalty cannot be imposed on conclusion of minor penalty proceedings.

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?

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.

9. Consultation with the Vigilance Commission in case of minor penalty proceedings:

In a case where the Vigilance Commission was consulted at the first stage and minor penalty proceedings were instituted after taking its advice, the Commission should be consulted, if it is proposed to drop the charges. A copy of the order passed should be sent to the Vigilance Commission. (Para 5 in Chapter XXVI "Minor Penalty Proceedings" – Vigilance Manual Volume-I)

References:

1. The A.I.S. (D&A) Rules, 1969.
2. The A.P.C.S. (CC&A) Rules, 1991.
3. Chapter-XXVI (Minor Penalty Proceedings) in Vigilance Manual Volume-I.
4. Circulars on the subject "Minor Penalties" at Sl.Nos.10, 15 in Part-II (Forms) of Vigilance Manual Volume-II.

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CHAPTER – X

MAJOR PENALTY PROCEEDINGS

1. Types of vigilance cases in which it is desirable to start major penalty proceedings:

Cases where it is desirable to start proceedings for imposing a major penalty are given below as illustrative guidelines:

(i) cases in which there is a reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a court of law. eg.:

(a) possession of disproportionate assets;

(b) obtaining or attempting to obtain, accepting or agreeing to accept illegal gratification;

(c) misappropriation of Government property, money or stores;

(d) obtaining or attempting to obtain any valuable thing or pecuniary advantage, without consideration or for inadequate consideration:

(ii) falsification of Government records;

(iii) gross irregularity or negligence in the discharge of official duties with a dishonest motive;

(iv) misuse of official position or power for personal gain;

(v) disclosure of secret or confidential information, even though it does not fall strictly within the scope of the Official Secrets Act;

(vi) false claims on the government like travelling allowance and reimbursement claims etc.

[Chapter XXV (Disciplinary Proceedings - Initiation of Action) Vigilance Manual Volume-I]

2. What is the procedure for imposition of Major Penalty?

The procedure for imposition of a major penalty is based on the provisions of Art.311 of the Constitution, according to which a member of a Civil Service of the Union or an All India Service or a Civil Service of a State or a holder of a civil post under the Union or a State shall not be dismissed or removed or reduced in rank unless he is informed of the charges against him and an inquiry is held and he is given a reasonable opportunity of being heard in respect of the charges. Though Art.311 as such does not apply, the principles nevertheless apply to employees of Public Sector Undertakings etc. by virtue of the Fundamental Rights enshrined in Arts.14, 16 and 21 of the Constitution.

3. What is a charge?

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 / misbehaviour. 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.

4. 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).

5. 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.

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

Yes. Rule 19 (2) of the A.P.C.S. (CC&A) Rules, 1991 provides that an authority who is competent only to impose minor penalties can institute proceedings for imposition of major penalties also. 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.

In respect of A.I.S. Officers, the State Government can initiate minor and major penalty proceedings, but, cannot impose the penalties of dismissal, removal and compulsory retirement. According to sub-rule (2) of Rule 7 of A.I.S. (D&A) Rules, 1969, the said penalties shall not be imposed on a Member of Service (A.I.S.) except by an order of the Central Government.

7. Can proceedings under A.I.S. (D&A) Rules, 1969 & A.P.C.S. (CC&A) Rules, 1991 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.

The Supreme Court examined the position of simultaneous departmental action and prosecution and summarised the case law as follows:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately;

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case;

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet;

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed;

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so

as to conclude them at an early date, so that if the employee is found not guilty, his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.

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.

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

Annexure – I : Articles of Charge

Annexure – II : Statement of imputations of misconduct or misbehaviour

Annexure – III : List of Documentary evidence in support of the charges

Annexure – IV: List of Oral witnesses in support of the charges

9. 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 irregularity in registration of three documents, 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.

10. 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.

11. 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 L.T.C. 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.

12. 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.

13. How to make Annexure III and IV?

For filling up Annexures III and IV, go through Annexure – II (Statement of imputations of misconduct or misbehaviour). 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]

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

While preparing the charge sheet, it must be ensured that only those documents that are available are referred to and relied upon which are available with the Disciplinary Authority, so that all the listed docunments can be funrnished to the charged officer. In this connection, it is relevant that the Hon'ble Supreme Court 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.

A charge should briefly, clearly and precisely identify the misconduct / misbehaviour and the Conduct Rules violated. It should also give the time, place and persons or things involved so that the Government servant has clear notice of his involvement. It should be unambiguous and free from vagueness.

Other precautions:

(i) Charge should not contain expression of opinion as to the guilt of the Government servant. It should start with the word "that" to convey that it is only an allegation and not a conclusion;

(ii) The terms delinquent or delinquent officer, which may suggest prejudging of the issue should not be used but only terms like Government Servant charged, public servant charged, official/ employee charged be used;

(iii) There should be no mention of the penalty proposed to be imposed either in the Articles of Charge or the Statement of imputations;

(iv) The articles of charge should preferably be in the third person;

(v) A separate charge should be framed in respect of each separate transaction / event or a series of related transactions / events amounting to misconduct, misbehaviour;

(vi) If in the course of the same transaction, more than one misconduct are committed, each misconduct should be specifically mentioned;

(vii) If a transaction / event shows that the Government servant must be guilty of one or the other of misconducts, depending on one or the other set of circumstances, then the charge can be in the alternative;

(viii) Multiplication or splitting up of charges on the basis of the same allegation should be avoided;

(ix) Charge should not relate to a matter, which has already been the subject matter of an enquiry and decision, unless it was based on technical considerations

(Para 14 - Chapter XXVII / Vigilance Manual Volume-I)

15. 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 matters 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 us4 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.*

16. 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 behaviour contrary to accepted practice and procedure, the same may be construed as violation of Rule 3 of the Conduct Rules and mentioned accordingly.

17. 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 vs. 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 quasijudicial 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.

18. 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."*

19. 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.

20. What is a Memorandum?

The charge sheet is served on the MoS / Government servant with a memorandum indicating that he / she is being proceeded against under Rule 8 of A.I.S. (D&A) Rules, 1969 and under 20 of the A.P.C.S. (CC&A) Rules, 1991 respectively, which gives him notice that major penalty proceedings are instituted against him.

He / She is required to appear before the disciplinary authority on a date to be specified not exceeding 10 working days and submit a

written statement of defence and to state whether he / she desires to be heard in person. He / She is informed that an inquiry will be held only in respect of the articles of charge not admitted by him / her and that he / she should specifically admit or deny each article of charge. He / She is also informed that if he / she fails to submit the statement of defence or fails to comply with the provisions of the Rules at any stage, the inquiry may be held ex-parte. He / She is warned against bringing influence to bear on the authorities on pain of action for misconduct under Rule 18 of A.I.S. (Conduct) Rules, 1968 and under Rule 24 of the A.P.C.S. (Conduct) Rules,1964.

It should be signed by the disciplinary authority and where Government are the disciplinary authority, by an officer who is authorised to authenticate the orders on behalf of the Governor.

21. 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 charge-sheet, therefore, means its despatch to the government servant, and this act is complete the moment step4s are taken for the purpose, by framing the charge-sheet 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 'charge-sheet 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."*

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

Yes.

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

During the course of inquiry, if it is found necessary to amend the charge sheet, it is permissible to do so, provided a fresh opportunity is given to the charged Government servant in respect of the amended charge sheet. The Inquiry Officer may hold the inquiry again from the stage considered necessary so that the Government servant should have a reasonable opportunity to submit his defence or produce his witnesses in respect of the amended charge sheet. If, there is, however, a major change in the charge sheet, it would be desirable to hold fresh proceedings on the basis of the amended charge sheet. [Para-25 - Chapter XXVII (Major Penalty Proceedings) Vigilance Manual Volume-I]

In the case of M.G. Aggarwal vs. Municipal Corporation of Delhi decided on 10th 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 31/01/1985 and 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 18/11/1986 have to be quashed.

24. 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', 'refused to receive'* ?

The drawing up and delivery of the charge sheet is a significant land-mark as it marks the commencement of the proceedings. The best way of serving the charge sheet is personal service by delivering it under acknowledgement. In the alternative, the charge sheet may be sent to the Government servant by registered post acknowledgment due to his last known address, failing which it may be published in the official gazette. Rule 42 of A.P.C.S. (CC&A) Rules, 1991 stipulates that if any order, notice etc cannot be served or communicated by delivering/ tendering it in person or through registered post, be published in the Andhra Pradesh Gazette.

Rule 27 of the A.I.S. (D&A) Rules, 1969 stipulates that every order, notice and other process made or issued under these rules shall be served in person on the Member of Service concerned or communicated to him by registered post.

The Allahabad High Court in *Subhash Chandra (2927(S/S) 2009) vs. State of U. P. , 2017 2 ADJ 630; 2017 0 Supreme (All) 36* held that

even if the Govt. servant refuses to receive the charge sheet, it does not amount to serving. For serving of charge sheet, the procedure required under relevant rules should be followed.

References:

1. Chapter-XXVII (Major Penalty Proceedings) in Vigilance Manual Volume-I.
2. Circulars on the subject “Major penalties” at Sl.Nos.94-96 in “List of Subjects-Cum-Subject Index” in Part-I of Vigilance Manual Volume-II.
3. Form for issue of AoCs in Major Penalty Proceedings at Sl.No.11 in Part-II (Forms) of Vigilance Manual Volume-II.
4. Legal Citations on the subject “Charge” at Sl.Nos. 44-59 in ‘Subject Index’ of Vigilance Manual Volume-III.

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CHAPTER – XI

ACTION ON RECEIPT OF WRITTEN STATEMENT OF DEFENCE

On the date fixed for appearance, the Member of Service / Government servant shall submit the written statement of his defence. On a consideration of the statement of defence and examination of the Member of Service / Government servant, the Disciplinary authority can take the following course of action:

(i) He may review and modify the articles of charge, in which case a fresh opportunity should be given to the Member of Service / Government servant to submit a fresh statement of defence.

(ii) He may drop some of the charges or all the charges, if he is satisfied that there is no further cause to proceed with.

(iii) He may, where he is of the opinion that imposition of a major penalty is not necessary, impose a minor penalty, on the basis of the record. But, he shall not do so where the Member of Service / charged Government servant has not offered a detailed explanation to the charge in the expectation that he could let in his defence in the course of the inquiry.

(iv) The disciplinary authority shall return a finding of guilty on such of the charges as are admitted.

(v) Inquiry need be conducted only into such of the charges as are not admitted.

(vi) The disciplinary authority may conduct the inquiry himself but should refrain from doing so, unless unavoidable.

(vii) He may appoint an Inquiring Authority to inquire into the charges. He should do so only after consideration of the statement of defence and fulfillment of the other tasks assigned to him.

2. What action can be taken, if the MoS / charged Government servant pleads guilty?

The disciplinary authority shall ask the MoS / Government servant whether he / she is guilty or has any defence to make and if he / she pleads guilty to any of the articles of charge, the disciplinary authority shall record the plea, sign the record and obtain the signature of the MoS / Government servant thereon. The disciplinary authority should give a finding of guilty on such of the charges as are admitted. The admission should be unequivocal, unqualified and unconditional. He / She may take evidence as he / she may think it fit. Where the MoS / Government servant pleads guilty to all the charges, the disciplinary authority may act in the manner laid down in Rule 9 of A.I.S. (D&A) Rules, 1969 and in Rule 21 of A.P.C.S. (CC&A) Rules, 1991.

3. What action can be taken, if the MoS / Charged Government pleads not guilty?

Where the MoS / Government servant appears before the disciplinary authority and pleads not guilty to the charges or refuses or omits to plead, the disciplinary authority shall record the plea and obtain the signature of the MoS / Government servant thereon and may decide to hold the inquiry itself or if it considers it necessary to do so, appoint a serving or a retired Government servant as Inquiring Authority for holding the inquiry into the charges.

Though the A.P. Civil Services (CC&A) Rules, 1991 permit such an inquiry being held by the disciplinary authority itself, the normal practice is to appoint another officer as Inquiry Officer. The officer selected should be of sufficiently senior rank and one who is not suspected of any prejudice or bias against the charged Government servant and who did not express an opinion on the merits of the case at an earlier stage. The Inquiring Authority could also be a Member, Commissionerate of Inquiries.

4. Who appoints Inquiring Authority?

The Inquiring Authority is appointed by the Disciplinary Authority under sub-rule (2) of Rule 8 of A.I.S. (D&A) Rules, 1969 in respect of

A.I.S. Officers and sub-rule (2) of Rule 20 of A.P.C.S. (CC&A) Rules, 1991 in respect of State Government employees.

5. Who appoints Presenting Officer and its need?

The Presenting Officer is appointed by the Disciplinary Authority under clause (c) of sub-rule (6) of Rule 8 of A.I.S. (D&A) Rules, 1969 in respect of A.I.S. Officers and under clause (c) of sub-rule (5) of Rule 20 of A.P.C.S. (CC&A) Rules, 1991 in respect of State Government employees.

The disciplinary authority may appoint a Government servant or legal practitioner as Presenting Officer to present the case on his behalf in support of the articles of charge before the Inquiring Authority. Ordinarily, a Government servant belonging to the departmental set up who is conversant with the case will be appointed as the Presenting Officer except in cases involving complicated questions of law where it may be considered desirable to appoint a legal practitioner to present the case on behalf of the disciplinary authority. The Presenting Officer should be senior in rank to the charged Government servant. An officer who made the preliminary enquiry into the case should not be appointed as Presenting Officer as bias may be attributed to him. Government instructed that in all cases investigated or enquired into by the Anti–Corruption Bureau, the Bureau shall nominate an officer other than the one who investigated or conducted the enquiry in the case, and the disciplinary authority shall appoint him as the Presenting Officer.

The Presenting Officer should ensure that the prescribed procedure is followed and raise written objections against any irregularities and acts of prejudice on the part of the Inquiring Authority then and there and report to the Disciplinary Authority promptly for taking up the matter with the Government.

The Presenting Officer should be supplied with copies of the documents and other relevant papers. He may also be given custody of the original documents sought to be produced in support of the charges. If the Government servant has submitted a written statement of defence, the Presenting Officer will carefully examine it. If there are any facts which the Government servant has admitted in his statement of defence

without admitting the charges, a list of such facts should be prepared by the Presenting Officer and brought to the notice of the Inquiring authority at the appropriate stage of the proceedings so that it may not be necessary to lead any evidence to prove the facts which the Government servant has admitted.

6. Other than the above, is there any exception to the appointment of Inquiring Authority?

Proviso to sub-rule (2) of Rule 8 of the A.I.S. (D&A) Rules, 1969 and sub-rule (2) of Rule 27 of A.P.C.S. (CC&A) Rules, 1991 provides that in respect of the cases pertaining to sexual harassment, the Complaints Committee constituted in the Department shall be deemed to be the Inquiry Authority appointed by the Disciplinary Authority for the purpose of Rule 8 of the A.I.S. (D&A) Rules, 1969 and Rule-20 of A.P.C.S. (CC&A) Rules, 1991.

7. Who can be appointed as Inquiring Authority?

The rules do not prescribe any qualification for appointment as I.A. However, principles of natural justice require that the person appointed as I.A. has no bias and had no occasion to express an opinion in the earlier stages of the case.

8. Whether a retired officer can be appointed as Inquiring Authority?

Yes. Rule 20 (5) (c) of the A.P.C.S. (CC&A) Rules, 1991 allows appointing a retired Government servant as Inquiring Authority.

9. When are the I.A. and P.O. appointed?

I.A. and P.O. 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 I.A. & P.O. 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.

10. Is the Charged employee entitled to have Government servant as Defence Assistant?

The charged employee is entitled to have a Government servant as his Defence Assistant, subject to restrictions imposed under the Rules. He has no right to have a particular employee as defence assistant, if the controlling authority is unable to spare his services for the purpose. No permission as such is required for the charged employee to take a Defence Assistant or for the employee concerned to function as a Defence Assistant. It is enough if the controlling authority is intimated of the fact.

The MoS / Government servant may avail himself of the assistance of any other Government servant as defined under the respective rules. However, he cannot take the assistance of a Government servant who has two pending disciplinary cases on hand in which he has to give assistance. He may also take the assistance of a retired Government servant. He may take the assistance of a Government servant posted at any other station only if permitted by the Inquiring Authority. He shall not take the assistance of a Government servant who is dealing in his official capacity with the case of the particular inquiry or any officer to whom an appeal may be preferred.

11. When the Charged Officer is permitted to appoint legal practioner as Defence Assistant?

If the Presenting Officer appointed by the disciplinary authority is a legal practitioner, the Member of Service / Government servant will be so informed by the disciplinary authority so that the Government servant may, if he so desires, engage a legal practitioner to present the case on his behalf before the Inquiring Authority. The Member of Service / Government servant may not otherwise engage a legal practitioner.

References:

1. The A.I.S. (D&A) Rules, 1969.
2. The A.P.C.S. (CC&A) Rules, 1991.

3. Chapter-XXVII (Major Penalty Proceedings) – Vigilance Manual Volume-I

4. Circulars on the subject “Major penalties” at Sl.Nos.94-96 in “List of Subjects-Cum-Subject Index” in Part-I of Vigilance Manual Volume-II.

5. Form for issue of AoCs in Major Penalty Proceedings at Sl.No.11 in Part-II (Forms) of Vigilance Manual Volume-II.

6. Legal Citations on the subject “Charge” at Sl.Nos. 44-59 in ‘Subject Index’ of Vigilance Manual Volume-III.

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CHAPTER – XII

FUNCTIONS OF INQUIRING AUTHORITY

1. What is the basic function of the Inquiring Authority (IA)?

As stated in Rule 8 (2) of A.I.S. (D&A) Rules, 1969 and Rule 20 (2) of A.P.C.S. (CC&A) Rules, 1991 the basic purpose of appointment of Inquiring Authority is to inquire into the truth of the imputation of misconduct or misbehaviour against Member of Service (MoS) / Government Servant.

2. What are the various stages at which the Inquiring Authority discharge the above function?

a) Pre hearing

b) Preliminary hearing

c) Regular hearing

d) Post hearing

e) At any stage during the Inquiry

f) Tackling some unusual circumstances which may arise

The details of the activities to be performed at every stage are hereunder.

3. What are the activities to be performed by the Inquiring Authority 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 finalized a Defence Assistant and if so informing the Controlling Officer and the Defence Assistant / Defense Counsel.

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

Firstly, the appointment of Inquiring Authority is required to be made by the Disciplinary Authority and no one else. It is desirable that the Inquiring Authority scrutinizes the order appointing him as Inquiring Authority and the enclosed documents thoroughly. When the President / Governor is the Disciplinary Authority, the order of appointment of the I.A. may be signed by any Authority that is competent to sign communications on behalf of the President / Governor. At any rate the Order should indicate that the appointment of I.A. is being made by the President / Governor 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 I.A. 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.

5. Can the Inquiring Authority take initiative for removing the deficiencies in the Charge Sheet?

Inquiring Authority 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 Inquiring Authority may bring it to the notice of the Disciplinary Authority well in-time so that the defect can be cured.

The Inquiring Authority 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 Inquiring Authority 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 I.A. is liable to be perceived as that of a prosecutor.

Illustrative list of patent errors is as under;-

(a) Typographical mistakes;

(b) Quoting wrong Rules, for example, -

(i) Charge Sheet is being issued under Rule 7 of A.I.S. (D&A) Rules,1969 and Rule 22 of A.P.C.S. (CC&A) Rules, 1991; [Correct Rule: Sub-Rule (4) of Rule 8 of A.I.S. (D&A) Rules,1969 and Sub-Rule (3) of Rule 20 of A.P.C.S. (CC&A) Rules, 1991]

(ii) The acquisition of this immovable property was not reported to the Competent Authority as required under Rule 16 (2) of the A.I.S. (Conduct) Rules, 1968 and under Rule 9 (4) of A.P.C.S. (Conduct) Rules, 1964. [Correct Rule: Rule 16 (4) of the A.I.S. (Conduct) Rules, 1968 and under Rule 9 (1) of A.P.C.S. (Conduct) Rules, 1964.]

(c) Incompatibility between the name of the Rule and its year e.g., A.I.S. (D&A) Rules, 1966 and A.P.C.S. (CC&A) Rules, 1989; [Correct Rule : The All India Services (Discipline and Appeal) Rules, 1969 and The Andhra Pradesh Civil Services (CC&A) Rules, 1991]

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

(e) Names of persons or places misspelt in the Charge Sheet i.e.*"…. Acquired a house at Hidurrabad at a cost of Rs.13,00,000/-" instead* of place as Hyderabad.

(f) Inconsistency between the numeric and verbal description of an amount e.g., *"Rs.7,348/- (Rupees Three Thousand seven Hundred and forty eight*)". [Correct words are – Rupees Seven thousand three hundred and forty eight]

(g) Wrong mention of the reference number and / or date of communication as well as Government instructions.

Illustrative list of patent errors which Inquiring Authority 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., unauthorized absence is shown as lack of absolute integrity, while it would have been better described as lack of devotion to duty.

6. Is it necessary for the Inquiring Authority to acknowledge the appointment order?

It is a good practice for the Inquiring Authority to acknowledge his appointment. This will keep the Disciplinary Authority informed that the Inquiring Authority has taken charge of the matters and is proceeding with the task. In case the Inquiring Authority 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 Inquiring Authority due to personal reasons, there may be circumstances wherein the Inquiring Authority, 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 I.A. should inform the Disciplinary Authority without any delay with complete reasons.

7. What is Daily Order Sheet (DOS)?

Daily Order Sheet is the record of the progress of the case handled by the I.A. during a day. It is prepared and maintained by the Inquiring Authority. While no definite format has been prescribed for the purpose, it is desirable to indicate the following information in the Daily Order Sheet.

(a) Serial Number of the Order

(b) Date

(c) Parties present

(d) What happened

[Example: State Witness No.3 and 4 examined, cross examined and re-examined. At the conclusion of the day's 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.

8. What is the importance of Daily Order Sheet (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 Presenting Officer 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.

9. Are copies of the Daily Order Sheet (DOS) supplied to all the parties concerned?

Copies of Daily Order Sheet (DOS) must be given to the parties present for 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.

10. 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 Inquiring Authority received his / her appointment order. It may read as under–

Daily Order Sheet No.1

Dated: DD/MM/YYYY

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 Sri ___ As Presenting Officer in the case

An acknowledgement was sent to the Disciplinary Authority

Sd/—
Name:
Designation:

11. How does the Inquiring Authority analyse and understand the charge?

Inquiring Authority has to perceive the charge sheet based on the Charge-Fact-Evidence co-relation. This will help the Inquiring Authority to proceed with the task with clarity right from the initial stage and also to conclude his assessment.

12. What are the precautions to be taken by the Inquiring Authority 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.

13. What is preliminary hearing stage?

The phase of the hearing from the first appearance of the parties before the I.A. till the stage of recording of evidence is known as preliminary hearing.

14. Under what circumstances, the I.A. may stay the proceedings?

The Inquiring Authority cannot stay the proceedings except under one of the two circumstances mentioned below:

(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 Inquiring Authority before commencement of Inquiry only.

15. What course of action is open to the Inquiring Authority 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. Inquiring Authority 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.

16. What course of action is open to the Inquiring Authority when the Charged Officer (C.O.) expresses lack of confidence in the Inquiring Authority?

As stated above, the Inquiring Authority shall stay the proceedings forthwith and inform the Charged Officer that he is at liberty to seek a change of I.A. as per Rules. Inquiring Authority should also inform the Charged Officer that the proceedings cannot be stayed indefinitely to facilitate the Charged Officer making application for change of Inquiring Authority and that the Charged Officer must submit the application within a prescribed time (say one week) on receipt of first Notice for appearing before the Inquiring Authority and submit proof thereof; else the Inquiring Authority is at liberty to proceed with the inquiry.

Simultaneously, the Inquiring Authority should apprise the Disciplinary Authority about the development and await further instructions.

17. What are the functions of the Inquiring Authority during the Preliminary Hearing stage?

During Preliminary Hearing, Inquiring Authority is required to perform the following functions.

(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 certificate of attendance to the parties. This will be done during regular hearing stage also.

(l) Deciding on the requests for adjournment.

18. What arrangements are to be made for conducting hearing?

Even before the arrival of parties, the Inquiring Authority 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 Inquiring Authority and the Inquiring Authority can watch and hear both the parties comfortably. At any rate, the seating arrangements should not be such as to send any signal that Inquiring Authority 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 Inquiring Authority by the organisation. However, Inquiring Authority should apply his mind to this aspect. Making a stenographer and a computer available for recording the proceedings is another aspect to be attended to by the Inquiring Authority

19. What are the activities to be performed by the Inquiring Authority during the regular hearing stage?

During regular hearing stage, Inquiring Authority will continue to prepare and issue Daily Order Sheets and certificate of attendance as was being done earlier. In addition, Inquiring Authority will be performing the following functions.

(a) Summoning witnesses

(b) Monitoring the conduct of the examination of witnesses

(c) Recording the statements of the witnesses

(d) Recording the demeanour of the witnesses

(e) Deciding objections about the questions that rose during examination of witnesses.

(f) Deciding requests for introducing additional witnesses.

(g) Deciding request for recalling witnesses

(h) Asking the C.O. 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 C.O. as to whether he got sufficient opportunity for his defence.

(k) Giving directions for the submission of the written briefs by the Presenting Officer

20. Does the Inquiring Authority have power to enforce attendance of witnesses?

Generally, the Inquiring Authority 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 State Government authorizing the Inquiring Authority to exercise powers specified in Section 5 of the A.P. Departmental Enquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1993.

Vide G.O. Ms. No.242, dated 26.05.1999, Government in General Administration (CoI-R) Department have issued notification, authorizing the Members of Commissionerate of Inquiries to exercise the powers specified in Section 5 of the said Act in respect of departmental inquiries entrusted by the Government.

Further, vide Memo No.83486/Ser.C/2003, dated 20.08.2003, it has been directed that all the Disciplinary Authorities and the Inquiry

Officers who are conducting departmental inquiries under the Andhra Pradesh Civil Services (CC&A) Rules, 1991 can use the provisions of the said Act to enforce the attendance of any witness and examine him on oath or to enforce the production of any document or material, which is necessary for conducting the departmental inquiry.

21. 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 13 of Chapter XXVIII of Vigilance Manual - Volume-I provides that refusal to appear as witnesses can be construed as sufficient cause for initiating action against official witnesses.

22. What are the post hearing activities to be performed by the Inquiring Authority?

During the last hearing, the Inquiring Authority will fix time limit which should not exceed two weeks for the Presenting Officer and the Charged Officer to submit their respective written briefs. Thereafter, the Inquiring Authority prepares his report and submits the same to the Disciplinary Authority together with the records of the case.

Vide Circular Memo No 56183/Ser.C/99, dated 15.10.1999, a format of 'Enquiry Report" has been prescribed for necessary guidance/ use of the Inquiry Officers [Form No.22 / Part-II / Vigilance Manual - Volume-II].

23. What is the time frame within which the Inquiry is to be completed by the Inquiring Authority?

As per Para 7.1 of Chapter XXIX of the Vigilance Manual - Volume-I, Inquiry Report is to be submitted by the Inquiring Authority within three months except in rare cases where number of witnesses goes up to 30 or 40, in which case the time limit can be longer. In trap cases, the Inquiring Authority shall complete the inquiry and submit his / her report to the Disciplinary Authority within 21 days (G.O. Ms. No. 41, G.A. (Ser.C) Dept, dated 18.04.2021)

Recently, vide G.O.Ms.No.91, G.A. (Ser.C) Dept., dated 12.09.2022 consolidated instructions have been issued fixing Time schedule to expedite the process of disciplinary cases at various levels and the details are as follows:

(a)	Fixing the date of hearing inspection of listed documents, submission of the list of defense documents and the nomination of a defense assistant (if not already nominated).	Within two weeks from the date of appointment of the Inquiring Authority.
(b)	Inspection of documents or submission of list of defense witnesses / defense documents or examination of the relevancy of documents or witnesses, procuring the additional documents and submission of the certificates, confirming inspection of the additional documents by accused officer or defense assistant.	Two weeks
(c)	Issue of summons to the witnesses, fixing the date of regular hearing and arrangements for participation of the witnesses in the regular hearing.	Two weeks
(d)	Regular hearing on day to day basis	Two weeks
(e)	Submission of written briefs by the Presenting Officer and submission of written briefs by Accused Officer / Defense Assistant to Inquiring Authority.	Two weeks
(f)	Submission of the Inquiry Report by the Inquiring Authority	Two weeks
(g)	Examination of the inquiry report by the disciplinary Authority in consultation with APVC where such consultation is necessary	One week

(h)	The Charged Official submits his written representation or submission to the Disciplinary Authority.	Within 15 days
(i)	Consultation with APVC where such consultation is necessary	Two weeks
(j)	Consultation with APPSC where such consultation is necessary	Two weeks
(k)	Passing final order in a disciplinary case by the disciplinary Authority	Two weeks

References:

1. The A.I.S. (D&A) Rules, 1969.
2. The A.P.C.S. (CC&A) Rules, 1991.
3. Chapter-XXVII (Major Penalty Proceedings) – Vigilance Manual Volume-I.
4. Chapter-XXVIII (Oral Inquiry) – Vigilance Manual Volume-I.
5. Circulars on the subject "Functions of the Inquiring Authority" at Sl.Nos.171-177 in "List of Subjects-Cum-Subject Index" in Part-I of Vigilance Manual Volume-II.

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CHAPTER – XIII

APPOINTMENT, ROLE AND FUNCTIONS OF THE PRESENTING OFFICER

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

The Disciplinary Authority shall appoint a Government servant or where he considers it necessary, a legally trained Government servant or a legal practitioner as Presenting Officer, to present the case in support of the Articles of charge. The order of appointment of Presenting Officer shall be issued in the Form-V annexed to G.O.Ms.No.82, General Administration (Ser.C) Department, dated 01.03.1996 @ Form-13 of Part-II of Volume - II of Vigilance Manual.

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 / Her 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 / her. 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 Investigating Officer, etc., and may lose the case through bad presentation.

2. What are the various functions performed by the Presenting Officer while discharging his duties?

For achieving his / her 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 have to be performed by the Presenting Officer throughout the course of his / her assignment. Notwithstanding this, various actions to be taken by the Presenting Officer in the course of his / her assignment can be conveniently categorised in the following four phases.

- ❖ Preparatory stage
- ❖ Preliminary Hearing stage
- ❖ Regular Hearing stage
- ❖ Post hearing stage.

3. What are the functions performed by the Presenting Officer during the preparatory stage?

Following are the functions performed by the Presenting Officer during the preparatory stage:

a) Examine Appointment Order and the documents received along with it

b) Establishing rapport with the Inquiring Authority

c) Understanding the Charge

d) Analysing the Charge

e) Link the facts to evidence

f) 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.

g) Visualize the transaction.

4. What documents are to be received by the Presenting Officer along with the appointment order?

The Presenting Officer receives copies of these documents along with the appointment order.

a) Charge Sheet along with the enclosures;

b) Written Statement of defense submitted by the Charged Officer

c) In case the Charged Officer has not filed any Statement of Defense, a confirmation to the above effect that the Charge Sheet has been served on the Charged Officer;

d) A copy of the order of appointment in respect of the Inquiring Authority.

5. Will it be fair and appropriate for the Presenting Officer to meet the Inquiring Authority unless called for a hearing?

Presenting Officer is an agent of the Disciplinary Authority and his endeavour is to prove the charge. On the other hand, Inquiring Authority 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 / herself as one assisting the Inquiring Authority 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 Inquiring Authority assisting the latter to ascertain the truth. Immediately on receipt of the appointment order, the Presenting Officer should get in touch with the Inquiring Authority and assure him / her of his co-operation. It is also desirable that the Presenting Officer informs the Inquiring Authority of his address and phone number to facilitate easy communication.

Needless to add, it will be unethical for a Presenting Officer to influence the Inquiring Authority regarding the hearing and its outcome.

6. What is the need for the Presenting Officer to understand the charge immediately on receipt of the appointment order?

Presenting officer is an essential and important functionary in conduct of inquiries. The Presenting Officer should therefore be well conversant with the case. He 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 unauthorized absence, in-subordination, 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 Presenting Officer analyse the Charge?

The Presenting Officer 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 Presenting Officer 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 Presenting Officer is concerned?

- Collection of original documents
- Finalising the schedule for inspection of the listed documents
- Conducting inspection of the listed documents
- Additional documents required by the Charged Officer
- Collection of documents cited by the Charged Officer
- Handing over listed documents to the Inquiring Authority after the inspection
- Obtaining copies of the documents required by the Charged Officer.

10. Wherefrom and when does the P.O. 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 Inquiring Authority. 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 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 be planned.

11. When does the inspection of documents take place?

At the stage of Preliminary Hearing, that a decision is taken for the inspection of the Documents. As per Rule 8 (12) (i) of A.I.S. (D&A) Rules, 1969 and Rule 20(9) (b) of A.P.C.S. (CC&A) Rules, 1991, inspection of the documents is required to be done by the Charged Officer "within 5 days of the orders given by the Inquiring Authority to inspect the documents". The Presenting Officer will have to indicate to the Inquiring Authority, his preference for the venue, date and time of the inspection of the listed documents. Depending upon the mutual convenience of the parties, the Inquiring Authority will fix the schedule for the inspection of the listed documents.

12. What precautions are to be observed by the Presenting Officer during inspection of documents?

Inspection of listed documents by the Charged Officer is a sensitive event in the disciplinary proceedings. Inquiring Authority is at liberty to leave it to the Presenting Officer and to the Charged Officer. 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 comparing the contents of the originals. However, if the Charged Officer requires to simultaneously perusing two documents, the same may be allowed ensuring the safety of the documents.

- Keep the documents at 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 Inquiring Authority rather than entering into an unpleasant debate.

13. What is the role of the Presenting Officer, with regard to the additional documents and witnesses demanded by the Inquiring Authority?

Charged Officer is entitled to ask for the documents which may be of help in his defence. In fact, the Inquiring Authority is required to ask for the details of the documents and witnesses required for the purpose of defence. Although it is for the Inquiring Authority 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 Inquiring Authority 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 Presenting Officer in collecting the additional documents demanded by the Charged Officer?

Often, the Inquiring Authority requests 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 Inquiring Authority direct from the custodian of the documents. Collection of the documents by the Presenting Officer may result in allegation being levelled by the Charged Officer that the documents were tampered while under the custody of the Presenting Officer. If the Inquiring Authority 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 Inquiring Authority.

15. What is the role of the Presenting Officer in handing over the listed documents to the Inquiring Authority?

After 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 Inquiring Authority, 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 Inquiring Authority 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 Presenting Officer entitled to have copies of the additional documents demanded by the Charged Officer?

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 Inquiring Authority and will not be under the custody of the Charged Officer. Hence, the Presenting Officer will have to request the Inquiring Authority for the copies of these documents and the perusal of the originals.

The Presenting Officer 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 Presenting Officer 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, Presenting Officer 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 Charged Officer did not dispute the authenticity of the documents, it may not be necessary to call such witnesses. Inquiring Authority 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 Inquiring Authority.

- 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 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 him / her and then state the facts relevant to the case. Presenting Officer 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, Presenting Officer should specifically ask for the same.

- Conducting re-examination of the witnesses where necessary: Presenting Officer 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 Presenting Officer during 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 the leading questions.
- Cross examining the defence witnesses

19. What precautions are required on the part of the Presenting Officer during the Regular Hearing stage?

It is said that efficient examination-in-chief, comprises asking questions in such a way that the witness understands what answer is

required; efficient cross examination comprises 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 P.O. 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 Charged Officer 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 Presenting Officer during post hearing stage?

After hearing is over, Presenting Officer 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 Presenting Officer?

There is no prescribed format for the brief of the P.O. The following format is suggested for the purpose:

a. Introduction

b. Details of charges levelled

c. Proceedings during the Preliminary Hearing: How was inspection of documents conducted; how many documents were disputed by the Charged Officer; how many documents were taken on record by the Inquiring Authority and how many were to be introduced through oral evidence; what were the documents and witnesses

demanded by the Charged Officer for the purpose of his / her defense.

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 Charged Officer: 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 Charged Officer;

i. Analysis of the Evidence presented by the parties;

j. Conclusion

22. What will happen if the Presenting Officer could not attend a hearing?

Rule 8 (15) of A.I.S. (D&A) Rules, 1969 and Rule 20 (10) of A.P.C.S. (CC&A) Rules, 1991 provides that the witnesses may be examined by or on behalf of the Presenting Officer. Absence of P.O. on any particular hearing would not necessarily imply postponement 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 Presenting Officer and the Disciplinary Authority?

The Presenting Officer presents the case on behalf of the Disciplinary Authority. Therefore, all the actions of the Presenting Officer should have the approval of the Disciplinary Authority. Presenting Officer

should regularly be apprising the Disciplinary Authority about the proceedings of each hearing. Para 33.2 of Chapter XXVII of Vigilance Manual Volume-I also provides as under.

> *33.2 The Presenting Officer should ensure that the prescribed procedure is followed and raise written objections against any irregularities and act of prejudice on the part of the Inquiring Authority then and there report to the Disciplinary Authority promptly for taking up the matter with the Government.*

References:

1. The A.I.S. (D&A) Rules, 1969.
2. The A.P.C.S. (CC&A) Rules, 1991.
3. Chapter-XXVII (Major Penalty Proceedings) – Vigilance Manual Volume-I.
4. Chapter-XXVIII (Oral Inquiry) – Vigilance Manual Volume-I.
5. Circulars on the subject "Appointment, Role and Functions of the Presenting Officer" at Sl.Nos.232-234 in "List of Subjects-Cum-Subject Index" in Part-I of Vigilance Manual Volume-II.

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CHAPTER – XIV

DEFENCE ASSISTANT

As regards "Defence Assistant" Point-8 of Chapter XXVII of Vigilance Manual Volume - I stipulates that – "the Government servant may take the assistance of a Government servant or a legal practitioner, where the Presenting Officer is a legal practitioner or a legally-trained Government servant."

Further stipulates that - "The Government servant shall not take the assistance of a Government servant dealing with the instant inquiry or an officer to whom an appeal lies. The Government servant may take the assistance of a Government servant posted at any other station with the permission of the Inquiring Authority. He shall not take the assistance of any Government servant who has two pending disciplinary cases on hand, in which he has to give assistance. He may take the assistance of a retired Government servant subject to conditions specified"

Point-35 of Chapter XXVII of Vigilance Manual Volume-I clarifies as hereunder;

(a) The Charged employee is entitled to have a Government servant as his Defence Assistant, subject to restrictions if any imposed under the Rules. He had no right to have a particular employee as Defence Assistant, if the controlling Authority is unable to spare his services for the purpose. No permission as such is required for the charged employee to take a Defence Assistant or for the employee concerned to function as a Defence Assistant. It is enough if the controlling Authority is intimated of the fact.

(b) In the copy of the order appointing the Presenting Officer furnished to the Government servant, the latter should be asked to finalize the selection of his Defence Assistant before the commencement of the proceedings.

(c) If the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner or a legally trained Government servant, the Government servant will be so informed by the Disciplinary Authority so that the Government servant may, if he so desires, engage a legal practitioner to present the case on his behalf before the Inquiring Authority. The Government servant may not otherwise engage a legal practitioner. In other cases, the Government servant may avail himself of the assistance of any other Government servant as defined in rule 2(e) of the A.P. Civil Services (CC&A) Rules, 1991. He, however, cannot take the assistance of a Government servant, who has two pending disciplinary cases on hand, in which he has to give assistance. He may also take the assistance of a retired Government servant. He may take the assistance of a Government servant posted at any other station, only if permitted by the Inquiring Authority. He shall not take the assistance of a Government servant, who is dealing in his official capacity with the case of the particular inquiry.

1. What are the restrictions on appointment of Retired Government servants as Defence Assistant?

The Government servant may also take the assistance of a retired Government servant to present the case on his behalf, subject to such conditions as may be specified by the Government from time to time by general or special order in this behalf [Under Note-2 of Rule 20 (5) (c)]

2. When is the Defence Assistant appointed?

At the time of Plea Recording of the Charged Officer i.e., issue of Notice at first time for calling the Charged Officer for his / her Plea Recording. In the Plea Recording Format itself, there is a column for his willingness to appoint his / her Defense Assistant.

DEFENCE DOCUMENTS:

As regards “Defence Documents” Point-9 (9.1 and 9.2) of Chapter XXVII of Vigilance Manual Volume - I stipulates that - the

Disciplinary Authority shall require the Government servant to submit within five days, a list of documents which he requires for his defence indicating relevance and the Disciplinary Authority may for reasons to be recorded in writing refuse to supply the documents, which in his opinion are not relevant.

Further, the Disciplinary Authority shall forward the list to the Authority having custody or possession with a requisition for production of the documents by a specified date. The Authority having custody or possession of the documents shall produce the documents before the Disciplinary Authority but can claim privilege on the ground of public interest or security of the State and refer to the Head of the Department or Secretary of the Department for a decision and the decision shall be informed to the Disciplinary Authority and the Disciplinary Authority shall communicate the information to the Government servant and withdraw the requisition.

References:

1. The A.I.S. (D&A) Rules, 1969.
2. The A.P.C.S. (CC&A) Rules, 1991.
3. Chapter-XXVII (Major Penalty Proceedings) – Vigilance Manual Volume-I.
4. Circular on the subject “Defence Assistant” at Sl.No.120 in “List of Subjects-Cum-Subject Index” in Part-I of Vigilance Manual Volume-II.

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CHAPTER – XV

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 Inquiring Authority and Presenting Officer till the commencement of hearing. During this stage, the Inquiring Authority and Presenting Officer examine the documents received by them and ensure their correctness. Besides, the Presenting Officer prepares for the presentation of the case.

(b) **Preliminary Hearing Stage:** From the time the parties start appearing before the Inquiring Authority till the commencement of presentation of evidence. During this stage Charged Officer is asked once again as to whether the charges are admitted, inspection of documents take place, Charged Officer 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 Presenting Officer and the Charged Officer submit their written briefs to the Inquiring Authority and the Inquiring Authority submits his / her report to the Disciplinary Authority.

2. Is there any time limit for commencement of hearing?

As per Rule 8 (8) of A.I.S. (D&A) Rules, 1969 and Rule 20 (8) of the A.P.C.S. (CC&A) Rules, 1991, first hearing of the case must be scheduled within two weeks of the Inquiring Authority receiving the Charge Sheet. As the copy of the Charge Sheet is sent to the Inquiring Authority together with the appointment order, it is implied that the inquiry is to

commence within two weeks of the Inquiring Authority receiving the appointment order. In respect of A.I.S. Officers, the time limit prescribed is extendable by a maximum of another two weeks.

3. What happens during the first hearing of the case?

As per Rule 8 (10) of the A.I.S. (D&A) Rules, 1969, when the Member of Service (MoS) appears before the Inquiring Authority, the latter should ask whether the Charged Officer admits the charges or has any defence to make. If the Charged Officer pleads guilty in respect of any of the charges, the Inquiring Authority should get it recorded and get it signed by the Charged Officer. Rule 8 (11) of the said rules provides that the Inquiring Authority shall send a finding of guilt to the Disciplinary Authority in respect of the charges in which the Charged Officer has pleaded guilty. There is no such provision under A.P.C.S. (CC&A) Rules, 1991.

In addition to the above, the Inquiring Authority 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 8 (12) (i) of A.I.S. (D&A) Rules, 1969] In respect of Charged State Government servant, inspection of documents listed in Annexure III within five days only. [Rule 20 (9) (b) of A.P.C.S. (CC&A) Rules, 1991]

(b) Submission of the list of witnesses to be examined on behalf of the Charged Officer [Rule 8 (12) (ii) of A.I.S. (D&A) Rules, 1969 and Rule 20 (9) (c) of A.P.C.S. (CC&A) Rules, 1991]

(c) Submission of the list of additional documents required by the Charged Officer within ten days [Rule 8 (12) (iii) of A.I.S. (D&A) Rules, 1969]. No such provision under rule of A.P.C.S. (CC&A) Rules, 1991.

4. Is it advisable for the Inquiring Authority to ask the Charged Officer during the first hearing as to whether the Charged Officer has faith in the Inquiring Authority?

It is not a bad idea to ask the Charged Officer during the first hearing as to whether the Charged Officer has faith in the Inquiring Authority and record the answer to the question. This may be quoted against the Charged Officer in case the Charged Officer raises any frivolous complaint of bias later. On the other hand, if the Charged Officer expresses lack of faith in the Inquiring Authority in the first instance, the same may be recorded and the Charged Officer may be advised of the option open to him / her for seeking change of Inquiring Authority.

5. Is it necessary for the I.A and P.O. to be present during the inspection of listed documents by the Charged Officer?

Not necessarily. Inspection of listed documents is to take place at "such a place as the Inquiring Authority may direct in the presence of the Presenting Officer 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 Charged Officer:

(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 Charged Officer may be arranged in the Court.

7. Can a document sought by the C.O. for the purpose of defence be denied?

Any document sought by the Charged Officer for the purpose of defence, can be denied only on either of the two grounds. Firstly, if the Inquiring Authority is of the opinion that the document is not relevant to the case. 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.

8. Generally, what are the documents which are not made available by the Head of the Department?

The following are examples of documents, access to which may reasonably be denied:

i) Reports of departmental officer appointed to hold a preliminary enquiry or the report of the preliminary investigation of S.P.E. or A.C.B. These reports are intended only for the Disciplinary Authority to satisfy himself whether departmental action should be taken against the MoS / Government servant or not and are treated as confidential documents. These reports are not presented before the Inquiring Authority 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. / A.C.B., 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.

ii) File dealing with the disciplinary case against the MoS / 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 A.P.V.C. – The advice tendered by the A.P 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.

This provision has to be perceived in the context of the Right to Information Act and subsequent judicial pronouncements. Besides, the employees have acquired right to peruse their Annual Performance Appraisal Reports.

9. Can the I.A. deny allowing a witness named by the C.O. for the purpose of his / her defence?

Inquiring Authority can deny a witness only on the ground of relevance.

10. What is the sequence of events during Regular Hearing?

(a) Documentary evidence on behalf of the Disciplinary Authority is taken on record;

(b) Oral evidence of Disciplinary Authority is taken on record

(c) Charged Officer is asked to state his / her defence.

(d) Documentary evidence on behalf of the Charged Officer is taken on record

(e) Oral evidence of Charged Officer is taken on record

(f) Mandatory question by the Inquiring Authority

11. Can the statements recorded during preliminary investigation be relied upon?

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 enquiry / 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 ACB / V&E / CID 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 conduct 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. eg. You are in the working in the store since 2010?

19. What is the scope of cross examination?

Scope of cross 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 understand what the purpose of the question is.

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 Presenting Officer and Charged Officer and in the Inquiry Report.

Witness will be asked to sign each page of the statement. Copies are given to the Charged Officer and the Presenting Officer.

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 Charged Officer be questioned by Presenting Officer?

Presenting Officer 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 stands to favour the delinquent?

If a MoS / Government servant, who had made a statement in the course of a preliminary enquiry / investigation, changes his / her stand during his examination at the inquiry and gives evidence, which is materially different from his / her signed statement recorded earlier, his conduct would constitute violation of Rule 3(1) and 3(2) of the A.I.S. (Conduct) Rules, 1968 and Rule 3 (1) and 3(3) of A.P.C.S. (Conduct) Rules, 1964. Disciplinary action should invariably be taken against such MoS / Government servant.

The Inquiring Authority may permit the party calling a witness to treat him /her as hostile and cross-examine him / her, when there is anything on record or in the testimony of the witness to show that there is material deviation.

28 Can a witness be called for the second time?

Under Rule 8 (16) of the A.I.S. (D&A) Rules, 1969 and under Rule 20 (11) of A.P.C.S. (CC&A) Rules, 1991, 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 the Inquiring Authority question the witnesses?

Rule 8 (15) of A.I.S. (D&A) Rules, 1969 and Rule 20 (10) of A.P.C.S. (CC&A) Rules, 1991 explicitly provides that the Inquiring Authority may also put such questions to the witnesses 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 issues over which Inquiring Authority has examined the witnesses. 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.

30 Can the Inquiring Authority question the Charged Officer?

The Inquiring Authority is required under Rule 8 (19) of A.I.S. (D&A) Rules, 1969 and Rule 20 (14) of A.P.C.S. (CC&A) Rules, 1991 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 on 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.*

31 What is mandatory question?

Rule 8 (19) of A.I.S. (D&A) Rules, 1969 and Rule 20 (14) of A.P.C.S. (CC&A) Rules, 1991 has a provision that empowers the Inquiry Authority to question the Charged Officer. This question shall be asked in the cases wherein the Charged Officer 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 Charged Officer to explain the circumstances against him. The Inquiring Authority is expected to question the Charged Officer *"on the circumstances appearing against him"* so that the Charged Officer can defend himself appropriately.

32 What happens if the deposition of a witness is in a language other than English or Hindi (whichever is the language of the proceedings)?

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 Inquiring Authority. The Inquiring Authority will also record a certificate that the depositions were translated and explained to the witness in the language in which the witness deposed.

33. What happens if a witness fails to turn up for examination?

A Government servant summoned by the Inquiring Authority for tendering evidence in disciplinary proceedings is bound to attend the same. Failure to do so will amount 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.

34. 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 respective organization where the witness is employed based on the certificate issued by the Inquiring Authority. Otherwise the expense will have to be met by the Disciplinary Authority.

NOTE: The procedural aspects in disciplinary cases of some Government employees and the comprehensive checklist for use of Disciplinary and Inquiry Authorities may be followed as per orders issued vide circular Memo. No.13673/Ser.C/2002-2, dated 05.07.2002 of General Administration Department [Form No.35 / Part-II / Vigilance Manual – Volume-II].

References:

1. The A.I.S. (D&A) Rules, 1969.
2. The A.P.C.S. (CC&A) Rules, 1991.
3. Chapter-XXVIII (Major Penalty Proceedings) – Vigilance Manual Volume-I.
4. Circulars on the subject “Conduct of Inquiry” at Sl.No.171 in “List of Subjects-Cum-Subject Index” in Part-I of Vigilance Manual Volume-II.

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CHAPTER – XVI

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 8 (20) of the A.I.S. (D&A) Rules, 1969 and Rule 20 (15) of A.P.C.S. (CC&A) Rules, 1991 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 a 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 8 (20) of the A.I.S. (D&A) Rules, 1969 and Rule 20 (15) of A.P.C.S. (CC&A) Rules, 1991 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 2nd September, 1978 provides that the Presenting Officers 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 17th 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 levelled 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. Thus 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 wasn't 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 exist 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 Presenting Officer?

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 Inquiring Authority.

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, the 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

The Presenting Officer submits his written brief, summing up the case, with a copy to the Charged Official after all evidence has been recorded in the case. Where the rules permit, he may, with the permission of the Inquiry Officer, argue the case orally.

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 ..... (Disciplinary Authority) against Sri ..... (Name and Designation), under Rule 8 of the A.I.S. (D&A) Rules, 1969 / Rule 20 of A.P.C.S. (CC&A) Rules, 1991 vide G.O. Rt. No._____ / Proceedings No. ..... dated..... On the denial of the charges by Sri ..... it was considered necessary by the

Disciplinary Authority to hold an inquiry into the matter and accordingly Sri ... (name and Designation) was appointed as the Inquiring Authority and the undersigned viz..... (Name and Designation) was appointed as the Presenting Officer. Inquiry was held during..... (date of commencement of the inquiry) and ... (date of conclusion of the inquiry). The Inquiring Authority ordered on..... That the written brief of the Presenting Officer be submitted by..... (date). Subsequently, on the request of the Presenting Officer time for submission of the brief was extended to.... 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 Sri ..... are....."

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 advanced 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 Inquiring Authority, 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.

References:

1. The A.I.S. (D&A) Rules, 1969.
2. The A.P.C.S. (CC&A) Rules, 1991.
3. Chapter-XXVII & XXVIII (Major Penalty Proceedings & Oral Inquiry) – Vigilance Manual Volume-I.
4. Circular on the subject “Brief of the Presenting Officer” at Sl.No.234 in “List of Subjects-Cum-Subject Index” in Part-I of Vigilance Manual Volume-II.

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CHAPTER – XVII

EVALUATION OF EVIDENCE

Departmental action is a serious proceeding that may have adverse effects on the livelihood and reputation of an employee. However, the proceeding gives employee a chance to meet the charge and prove his innocence. It is intended to give adequate opportunity to the charged employee to put up his defense and also to help the Disciplinary Authority to assess the guilt of the employee to decide what action, if any, should be taken against him.

During the inquiry, evidences are put forward by both sides and the Inquiry Authority has to evaluate the evidences fairly keeping with the principles of natural justice such as “Audi Alteram Partem” (Hear both sides - No person should be condemned unheard), “Nemo Judex in Causa, sua potest” (No one can be a judge in his own cause), and “justice is not only to be done but it should also be seen to be done.”

As such, it is important to every employee to have a fair idea of certain terms and issues to understand the process and principles of evaluation of evidences during departmental proceedings. Some such issues include “Evidence”, “Facts in issue”, “Burden of proof”, “Types of evidence” and “standard of proof” etc.

The task of the functionaries in Disciplinary Proceedings is 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 P.O. Inquiring Authority is required to evaluate evidence to arrive at a 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 conclusions are acceptable. Appellate Authority is also required to perform the above function.

Although skill can be developed through exercises, case studies, etc. yet 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 proceedings viz.

(a) Documentary evidence and

(b) Oral evidence.

In contrast, in criminal trials certain objects (such a 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 principles for 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 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 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 trial, 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 departmental inquiries, a relaxed procedure is adopted for allowing circumstantial evidence.

5. What is pre-ponderance of probability?

Literal meaning of the word “Pre-ponderance” 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 available.

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 [1984AIR 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 levelled 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 the charges.

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 levelled 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 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.
Corroboration through other evidence	Whether the statements are in tune with the evidence derived from other sources.
Conformity with experience	A witness who states things which are incredible for a 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 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 behaviour 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 demeanour 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 on a fact 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 Inquiring 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 contraverting 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.

References:

1. The A.I.S. (D&A) Rules, 1969.
2. The A.P.C.S. (CC&A) Rules, 1991.
3. Chapter- XXVIII (Oral Inquiry) in Vigilance Manual Volume-I.

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CHAPTER- XVIII

EX-PARTE INQUIRY

When the Charged employee after receiving the charge-sheet or otherwise does not submit his written statement of defence or refuses to attend the inquiry or remains absent or otherwise fails or refuses to comply with the provisions in this regard, it is open to the Inquiring Authority to conduct the inquiry ex-parte. In such a case where proof of the charge depends only on undisputed and undeniable documents, the findings may be given based on the materials on record. But where the proof of the charge depends on oral evidence only or on oral and documentary evidence, it is necessary to examine witnesses.

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 8 (21) of the A.I.S. (D&A) Rules, 1969 and Rule 20 (6) of A.P.C.S. (CC&A) Rules, 1991 provides as under.

> *"If the MoS / 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 does not 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 A.I.S. (D&A) rules, 1969 and the A.P.C.S. (CC&A) Rules, 1991.

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?

The drawing up and delivery of the charge sheet is a significant land-mark as it marks the commencement of the proceedings. The best way of serving the charge sheet is personal service by delivering it under acknowledgement. In the alternative, the charge sheet may be sent to the Government servant by registered post acknowledgment due to his last known address, failing which it may be published in the official gazette. Rule 42 of A.P.C.S. (CC&A) Rules, 1991 stipulates that if any order, notice etc cannot be served or communicated by delivering/ tendering it in person or through registered post, be published in the Andhra Pradesh Gazette.

Rule 27 of the A.I.S. (D&A) Rules, 1969 stipulates that every order, notice and other process made or issued under these rules shall be served in person on the Member of Service concerned or communicated to him by registered post.

The Allahabad High Court in *Subhash Chandra (2927(S/S) 2009) vs. State of U. P. , 2017 2 ADJ 630; 2017 0 Supreme (All) 36* held that even if the Govt. servant refuses to receive the charge sheet, it does not amount to serving. For serving of charge sheet, the procedure required under relevant rules should be followed.

5. Is there any difference between holding ex-parte inquiry and dispensing with Inquiry under Rule 14 of A.I.S. (D&A) Rules 1969 and Rule 25 of A.P.C.S. (CC&A) Rules, 1991?

The following differences exist between ex-parte inquiry and dispensing with Inquiry:

Sl. No.	Ex-parte inquiry	Inquiry dispensed with under Rule 14 of A.I.S. (D&A) Rules, 1969 and Rule 25 of A.P.C.S. (CC&A) Rules 1991
1	Decision is taken by the Inquiring Authority	Decision is taken by the Disciplinary Authority
2	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.
3	Conditions precedent specified in Rule 8 (21) of the A.I.S. (D&A) Rules, 1969 and Rule 20 (6) f A.P.C.S. (CC&A) Rules 1991 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.
4	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.
5	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 chance of leading evidence to support his case.
6	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 the above said rules.

6. What precautions are necessary before resorting to ex-parte inquiry?

Following precautions 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 facilities 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 his 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 8 (21) of the A.I.S. (D&A) Rules, 1969 and Rule 20 (6) of the A.P.C.S. (CC&A) Rules, 1991. 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 back 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.

References:

1. The A.I.S. (D&A) Rules, 1969.

2. The A.P.C.S. (CC&A) Rules, 1991.

3. Chapter-XXIX in Vigilance Manual Volume-I.

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CHAPTER-XIX

POST RETIREMENT PROCEEDINGS

In respect of pensionable services, there are provisions that disciplinary proceedings instituted while the employee was in service shall be continued even after his retirement, and proceedings can be instituted even after retirement in respect of any event which took place not more than 4 years before such institution. The President or the Governor, as the case may be has the right to withhold pension and gratuity or withdraw pension or part thereof permanently or for a specified period and order recovery from pension of the whole or part of any pecuniary loss caused by the employee, as an outcome of such proceedings.

1. What is the status of relationship between a pensioner and the former employer?

Rule 3 of A.I.S. (DCRB) Rules, 1958 and Rule 8 of the A.P. Revised Pension Rules, 1980 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 3 (2) of A.I.S. (DCRB) Rules, 1958 provides that Central Government has power to withhold or withdraw pension in respect of retired A.I.S. Officers. Rule 8 (1) (b) of A.P. Revised Pension Rules, 1980 provides that the Pension Sanctioning Authority has power to withhold or withdraw pension in respect of retired State Government employees.

4. What is the procedure to be followed in the case of a pensioner convicted of a serious crime?

As per Rule 3 (1) of A.I.S. (DCRB) Rules, 1958 and Rule 8 (1) of A.P. Revised Pension Rules, 1980 action regarding withholding or withdrawing pension is to be taken in the light of the judgment of the court relating to the conviction. No such order shall be passed in case of AIS Officers without consulting the Union Public Service Commission. In case of State Government Servants, A.P. Public Service Commission shall be consulted only in cases where State Government is competent to pass the order.

5. What is the procedure to be followed in the case of a grave misconduct?

Rule 8 (3) of A.P. Revised Pension Rules, 1980 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. No such provision in respect of retired A.I.S. Officers.

6. What is the scope of the expressions serious crime and grave misconduct occurring in Rule 3 of A.I.S. (DCRB) Rules, 1958 and Rule 8 (1) of A.P Revised Pension Rules, 1980?

The expressions have not been defined in the Rules. However, Explanation (a) and (b) under Rule 8 of A.P. Revised Pension Rules, 1980 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 A.P. Revised Pensions Rules, 1980.

7. What is the scope regarding the quantum and duration of reduction of pension under Rule 3 of A.I.S. (DCRB) Rules 1958 and Rule 8 of the AP Revised Pension Rules, 1980?

Rule 3 (2) of A.I.S. (DCRB) Rules, 1958 provides that withhold or withdraw any pension or any part of it, for a specified period or indefinitely, on a reference from the State Government concerned.

Proviso to Rule 8 (1) of A.P. Revised Pension Rules, 1980 provides that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in sub-rule (5) of Rule 45. The reduction can be for a specified period or permanently.

8. What action can be taken as regards pension and gratuity in respect of a misconduct committed during service?

Rule 6 of the A.I.S. (DCRB) Rules, 1958 and Rule 9 of the A.P. Revised Pension Rules, 1980 lays down the following three powers for the Central / State Governments 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.

9. What are the circumstances under which the powers under Rule 6 of the A.I.S. (DCRB) Rules, 1958 and Rule 9 of the A.P. Revised Pension Rules, 1980 can be invoked?

Powers under Rule 6 / Rule 9 respectively 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 up to re-employment after retirement"

10. What is the scope regarding the quantum of reduction of pension under Rule 6 of the A.I.S. (DCRB) Rules, 1958 and Rule 9 of the AP Revised Pension Rules, 1980?

Note-1 to Explanation of provisos to sub-rule (1) of Rule 6 of the A.I.S. (DCRB) Rules, 1958, where a part of pension is withheld or withdrawn the amount of such pension shall not be reduced below the amount of rupees three thousand five hundred per mensem

Second proviso to sub-rule (1) of Rule 9 of A.P. Revised Pension Rules, 1980 provides that a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in sub-rule (5) of Rule 45.

11. What are the similarities and distinctions between Rules 3 and 6 of the A.I.S. (DCRB) Rules, 1958 and Rule 8 and Rule 9 of the A.P. Revised Pension Rules, 1980?

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:

Sl.No.	Rule 3 of the A.I.S. (DCRB) Rules, 1958 & Rule 8 of the A.P.R.P. Rules, 1980	Rule 6 of the A.I.S. (DCRB) Rules, 1958 & Rule 9 of the A.P.R.P. Rules, 1980.
(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	Provides for withholding of gratuity and pension (if the same were not sanctioned by the time action is taken)
(c)	Question of withholding does not arise because action is initiated after the sanction of pension	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)
(d)	For the same reason, this rule does not deal with gratuity	Recovery from pension
(e)	Order for withdrawal of pension is to be made after issue of show cause notice	Order may be made only if the pensioner is found guilty of grave misconduct or negligence in a departmental or judicial proceedings
(f)	Powers are vested with the Central Government / Pension Sanctioning Authority respectively	Powers vested only with the Central Government / State Government respectively.
(g)	Consultation with UPSC / APPSC is necessary only if the powers are exercised in the capacity of Appointing Authority	Consultation with UPSC is always necessary because President alone has powers under Rule 6 of the A.I.S. (DCRB) Rules, 1958. Consultation with APPSC is necessary in the cases of departmental proceedings. However, consultation with APPSC is not necessary, when the pensioner is found guilty in any judicial proceedings.
(h)	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 departmental or judicial proceedings.

12. What are the major distinctions between initiating disciplinary proceedings before retirement and those initiated thereafter?

Sl. No.	Initiating proceedings while in service	Initiating proceedings after retirement
(a)	Appropriate Disciplinary Authority as prescribed under the A.I.S. (D&A) Rules, 1969 / the A.P.C.S. (CC&A) Rules, 1991, may initiate proceedings	Proceedings can be initiated only with the approval of the Central Government under Rule 6 (1) (b) of the A.I.S. (DCRB) Rules, 1958 and with the approval of the State Government under Rule 9 (2) (b) of the A.P. Revised Pension Rule, 1980.
(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 in terms of Rule 6 (1) (b) (ii) of the A.I.S. (DCRB) Rules, 1958 and Rule 9 (2) (b) (ii) of A.P.R.P. Rules, 1980. Post retirement proceedings cannot be in respect of a misconduct committed four years before initiation of proceedings. Based on the judgement pronounced by the Hon'ble High Court of A.P. on 17.11.2017 in W.P.No.38901 of 2017, the Finance (HR.III-Pension) Dept. (Govt. of A.P.) vide their Cir. Memo. No. 993083/ FIN01 - HR0CLI / 9 / 2019-HR-III,dated 15.03.2020, have clarified that the

		date of occurrence of the event is always the date on which the effect of the event is felt or found out in Rule 9 (2) (b) (ii) of the A.P.R.P. Rules, 1980.
(c)	Respective disciplinary authority will decide as to where the proceedings are to be held	Rule 6 (1) (b) (ii) of the A.I.S. (DCRB) Rules, 1958 and Rule 9 (2) (b) (ii) of A.P.R.P. Rules, 1980 provides that the proceedings shall be conducted by such authority and in such place as the Central Government and State Government respectively 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 / Governor
(e)	Consultation with UPSC / APPSC will be necessary only in such cases falling within the ambit of Article 320(3) (c) of the Constitution of India	Consultation with UPSC / APPSC is mandatory in all cases of persons serving under the Government of India or the Government of a State in the Civil capacity

13. 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."

14. What happens to the ongoing disciplinary proceedings which could not be completed before the retirement of the Government Servant?

As stated above, the proceedings can be continued under Rule 6 (1) (a) of the A.I.S. (DCRB) Rules, 1958 and Rule 9 (2) (a) of A.P.R.P. Rules, 1980, subject to the condition that the findings will be submitted to the Central / State Governments.

15. 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 14th 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.

16. In the light of the four year limitation for initiation of post retirement disciplinary proceedings, what is the effective date of commencement of proceedings?

Explanation (a) and (b) to Rule 6 (1) of the A.I.S. (DCRB) Rules, 1958 and Rule 9 (6) of A.P.R.P. Rules, 1980 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.

17. 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 13th 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.

18. Are there any specific forms prescribed for the proceedings under Pension Rules?

Yes. Forms prescribed for the purpose under respective Pension Rules.

References:

1. The A.I.S. (DCRB) Rules, 1958.
2. The A.P. Revised Pension Rules, 1980.
3. Chapter-XXXI in Vigilance Manual Volume-I.

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CHAPTER - XX

COMMON PROCEEDINGS

1. What is 'common proceedings'?

Where two or more Members of Service / Government servants of the same service or different services are concerned in any case, the Government or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceedings. This is provided under Rule 13 of the A.I.S. (D&A) Rules, 1969 and Rule 24 of A.P.C.S. (CC&A) Rules, 1991.

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.

Further, in the integrated check-posts, number of employees of multiple departments like Transport, Commercial Taxes, Revenue, Agriculture & Marketing are functioning to do their respective duties. If any surprise check conducted by the A.C.B. Officials on integrated check-posts involving the employees of the multiple departments in a particular surprise check, in those cases, common proceedings is desirable.

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 13 of A.I.S. (D&A) Rules, 1969 and Rule 24 of A.P.C.S. (CC&A) Rules, 1991, common proceedings may be initiated either by the Central / Statement Governments respectively 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?

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 (2) of Rule 24 of A.P.C.S. (CC&A) Rules, 1991, the above order should also provide for the following:

(a) the penalties specified in Rule 9 and Rule 10 which such disciplinary authority shall be competent to impose;

(b) whether the procedure laid down in Rule 20 and 21 or Rule 22 shall be followed in the proceedings.

Once the disciplinary authority is nominated, the procedure is the same as in any other case of disciplinary proceedings.

6. Can common inquiry be conducted in respect of A.I.S. Officers and State Officers / Staff, when they are involved in a common irregularity?

When A.I.S. Officers, for whom A.I.S. (D&A) Rules, 1969 are applicable and State Officers / Staff for whom A.P.C.S. (CC&A) Rules,

1991 are applicable; are jointly involved in a misconduct, the Competent Disciplinary Authority can appoint a Common Inquiring Authority, in consultation with respective Counter Part Department. (Cir.Memo.No. 49/Spl.C/2004-1, G.A. (Spl.C) Dept., dt.17.02.2004).

7. Can common proceedings be initiated where two or more persons concerned therein are governed by different disciplinary rules?

In such cases, proceedings will have to be instituted separately in accordance with the respective Rules applicable to each one of them and such public servants cannot be dealt with in a common proceedings. However, it will still be advantageous, if the inquires are entrusted to the same Inquiring Authority.

8. 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.

9. What are the precautions to be observed while resorting to Common Proceedings?

As the number of charged 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 charged employee is absent. Thus the scope for delay is inbuilt in common proceedings. But under the circumstances, where proper notices were issued and all possible steps were taken to ensure presence of charged employee, the Inquiring Authority is left with no option but to proceed with the inquiry ex-parte.

10. Can common proceedings be initiated against serving public servants and retired public servants?

Common proceedings cannot be instituted if one of the Government servants involved has retired from service. Proceedings against the retired person will have to be held under rule 9 of the Andhra Pradesh Revised Pension Rules, 1980 and against the persons in service in terms of Rule 24 of the A.P. Civil Services (CC&A) Rules, 1991. The oral inquiry against them in such a case should be entrusted to the same Inquiring Authority. Common proceedings when once commenced can however be continued even if one of the persons retires from service in the course of the proceedings.

11. Is it objectionable to consider the statement of the co-charged official in adjudging misconduct in common proceedings?

In the case of Vijay Kumar Nigam vs. State of MP, 1997(1) SLR SC 17, the Supreme Court held that taking into account the statement of the co-charged official in common proceedings in adjudging misconduct, is not objectionable.

References:

1. The A.I.S. (D&A) Rules, 1969.
2. The A.P.C.S. (CC&A) Rules, 1991.
3. Chapter-XXIX in Vigilance Manual Volume-I.
4. Circulars on the subject “Common Proceedings” at Sl.Nos.108 & 109 in “List of Subjects-Cum-Subject Index” in Part-I of Vigilance Manual Volume-II.

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CHAPTER – XXI

BORROWED AND LENT OFFICERS
[A.P.C.S. (CC&A) Rules, 1991]

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. (Sub-rule (1) of Rule 30 of A.P.C.S. (CC&A) Rules, 1991)

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. (Sub-rule (2) of Rule 30 of A.P.C.S. (CC&A) Rules, 1991)

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 make such orders as it deem necessary. (Clause (i) of sub-rule (2) of Rule 30 of A.P.C.S. (CC&A) Rules, 1991)

If the borrowing authority is of the opinion that the penalty specified in clause (vi) of Rule 9 should be imposed, it may pass such orders as it may deem necessary, duly following the procedure prescribed in Rule 20. The borrowing authority shall inform the lending authority, the circumstances leading to the imposition of the penalty

specified in clause (vi) of Rule 9. (Clause (ii) of sub-rule (2) of Rule 30 of A.P.C.S. (CC&A) Rules, 1991)

If the borrowing authority is of the opinion that any of the penalties specified in clause (vii) to (x) of Rule 9 should be imposed on such Govt. servant, it shall replace his / her services at the disposal of the lending authority and transmit to it the proceedings of the inquiry and the lending authority may, if it is disciplinary authority, pass such orders thereon as it may deem necessary. (Second proviso to clause (ii) of sub-rule (2) of Rule 30 of A.P.C.S. (CC&A) Rules, 1991)

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 30 of the A.P.C.S. (CC&A) Rules, 1991 clarifies that the disciplinary authority is empowered to hold further inquiry as it may deem necessary, as far as may be, in accordance with Rule 20.

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

(d) It can also impose the major penalty at under clause (vi) of Rule 9 of A.P.C.S. (CC&A) Rules, 1991 duly informing the lending authority, which lent the services of the Government servant the circumstances leading to the imposition of the penalty specified therein

(e) It will have to repatriate the employee if it is of opinion that major penalties specified under clauses (vii) to (x) of Rule 9 of A.P.C.S. (CC&A) Rules, 1991 are required to be imposed.

(f) Findings of the inquiry conducted by borrowing department are not binding on lending department.

Lending Authority is at liberty to conduct further inquiry as deemed necessary.

Reference:

The A.P.C.S. (CC&A) Rules, 1991.

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CHAPTER – XXII

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 Presenting Officer and the Charged Officer through their respective briefs and give a finding as to whether the charges are proved or not.

2. What are the materials 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 8 (5) of A.I.S. (D&A) Rules, 1969 / Rule 20 (4) of A.P.C.S. (CC&A) Rules, 1991 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 8 (17) of A.I.S. (D&A) Rules, 1969 / Rule 20 (12) of A.P.C.S. (CC&A) Rules, 1991 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 8 (20) of A.I.S. (D&A) Rules, 1969 / Rule 20 (15) of A.P.C.S. (CC&A) Rules, 1991or 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 Inquiring Authority 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 Inquiring Authority may have to state that the charge is partially proved.

Under such a contingency, the Inquiring Authority should mention explicitly as to which part of the charge is proved and which part is not proved.

5. What should the Inquiring 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 8 (24) of the A.I.S. (D&A) Rules, 1969 and Rule 20 (18) of the A.P.C.S. (CC&A) Rules, 1991 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 Member of Service / Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself / herself against such article of charge."

6. What should be the format of the Report?

Rule 8 (24) of the A.I.S. (D&A) Rules, 1969 and Rule 20 (18) of the A.P.C.S. (CC&A) Rules, 1991, broadly indicate 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 Member of Service / 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.

Government evolved a format of Inquiry Report for guidance. (Form No.22 of Part II of Vigilance Manual – Volume-II). Forms prescribed meet the basic requirements and they are not to be adopted mechanically. The rules which are applicable shall be modified suitably.

7. What other documents are to be sent along with the report?

Rule 8 (24) (ii) of the A.I.S. (D&A) Rules, 1969 and Rule 20 (18) (ii) of the A.P.C.S. (CC&A) Rules, 1991 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 Member of Service / 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 Member of Service / 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 in 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

(d) Written Statements of Defence made under Rules 8 (5) and 8 (17) of the A.I.S. (D&A) Rules, 1969 & Rules 20 (4) and 20 (12) of the A.P.C.S. (CC&A) Rules, 1991 or corresponding rule under which the inquiry was held

(e) Submissions by the Presenting Officer and the Charged Officer including written brief, if any, under Rule 8 (20) of A.I.S. (D&A) Rules, 1969 and Rule 20 (15) of A.P.C.S. (CC&A) Rules, 1991 or corresponding rule under which the inquiry is being held or corresponding rule under which the inquiry was held

(f) Orders passed by the Inquiring 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.

(g) 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 the Inquiry Report be 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.

10. What are the powers of the Inquiring Authority regarding recalling and modifying the Inquiry Report?

The Inquiring Authority after signing the report becomes functus officio and cannot thereafter make any modification in the report. (Para 33.3 – Chapter XXVIII – Vigilance Manual Volume-I)

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. (Sub-rule (1) of Rule 9 of A.I.S. (D&A) Rules, 1969 and sub-rule (1) of Rule 21 of A.P.C.S. (CC&A) Rules, 1991) 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?

The Inquiring Authority will forward the Inquiry Report to the Disciplinary Authority together with the record of the inquiry including the exhibits. He will also forward as many copies of Inquiry Report as the number of delinquents to the Disciplinary Authority.

References:

1. The A.I.S. (D&A) Rules, 1969.
2. The A.P.C.S. (CC&A) Rules, 1991.

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MODEL INQUIRY REPORT PREPARED BY S.S.UPADHYAY LEGAL ADVISOR TO GOVERNOR, U.P., LACKNOW

HOW TO PREPARE INQUIRY REPORT?

(1) Begin with briefly quoting the material allegations leveled against the charged employee in the complaint by quoting the name / address etc. of the complainant, name / designation of the Disciplinary Authority ordering the inquiry along with the date of order passed by him appointing the Inquiry Officer.

(2) Quote the first charge framed against the charged employee.

(3) Quote the relevant part of the reply given by the charged employee against the said charge.

(4) Now quote the name of witnesses examined in support of the charge and also quote the relevant material / portion of the statement of the witnesses recorded in support of the charge.

Now quote the documents relied on and produced in support of the charge and also the name and statement of the witness who had proved the said document or documents.

(5) Also quote the name of the Defence Witness or the defence document, if any, produced by the charged employee in contradiction of the oral and documentary evidence produced by the Department / Prosecution in support of the charge against the charged employee.

(6) Now the Inquiry Officer should discuss and appreciate the documentary and oral evidence led by both sides in support of and against the charge framed. The Inquiry Officer should then clearly record his findings derived from the documentary and oral evidence and should clearly conclude whether or not the guilt of the charged employee as mentioned in the charge is proved.

(7) Only that much part of the oral and documentary evidence should be quoted in the inquiry report which is really required for discussions on the charge or the controversies involved in the inquiry. Unnecessary or irrelevant part of the evidence should normally be avoided and not quoted. The derivative or the

conclusion derived from the appreciation of evidence should be recorded in the form of clear findings in the inquiry report.

(8) If the Inquiry Officer records findings that the charge / guilt of the charged employee is proved then he must mention the conduct rule breach whereof has been found proved during the inquiry.

(9) the above exercise must be completed and observed by the Inquiry Officer in respect of each charge framed against the charged employee.

(10) The inquiry report should be then signed by the Inquiry Officer under his full signature, name, designation and date.

(11) Normally, no penalty to be inflicted upon the delinquent should be suggested by the Inquiry Officer to the Disciplinary Authority unless he is called upon in writing by the Disciplinary Authority to do the same.

(12) The inquiry report in triplicate along with a covering letter addressed to the Disciplinary Authority and kept in a sealed cover should be sent by the Inquiry Officer to the Disciplinary Authority.

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CHAPTER – XXIII

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 its own reasons. (Rule-21 (2) of APCS (CC&A) Rules, 1991)

3. Can the Disciplinary Authority order for a fresh Inquiry if it is not satisfied with the Inquiry Report received by it?

Under Rule 9 (1) of the A.I.S. (D&A) Rules, 1969 and Rule 21 (1) of A.P.C.S. (CC&A) Rules, 1991, 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 9 (1) of the A.I.S. (D&A) Rules, 1969 and Rule 21 (1) of A.P.C.S. (CC&A) Rules, 1991 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?

No. The Disciplinary Authority cannot order for a fresh inquiry if it is not satisfied with the findings of the Inquiring Authority. In the case of K R Deb vs. Collector of Central Excise [1971 AIR 1447, 1971 SCR 375] [Decision No.131 – Vigilance Manual Volume-I] facts were as under:

> Enquiry was conducted thrice by different Inquiry Officers, all of whom exonerated the charged officer of the charges. Their inquiry reports, however, did not appeal to the disciplinary authority who ordered a fresh inquiry for the fourth time and punished him on the finding of guilty recorded by the Inquiry Officer.
>
> The Supreme Court held that rule 15 Central Civil Services (CCA) Rules 1957 on the face of it 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 reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 of Central Civil Services Rules 1957 for completely setting aside previous inquiries on the ground that the report of the Inquiry 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. It seemed that punishing authority 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. On the material on record a suspicion does arise that the Collector was determined to get some Inquiry Officer to report against the appellant.

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 8 (15) of the A.I.S. (D&A) Rules, 1969 and Rule 20 (13) of the A.P.C.S. (CC&A) Rules, 1991 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 Inquiring 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 consultation with the C.V.C. / A.P.V.C. 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-Ill(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.

The Departments should obtain the advice of the A.P.V.C. after conclusion of the departmental inquiry on the delinquency of the MoS / Govt. servant and the penalty to be imposed, if any, on him before arriving at a provisional conclusion and after receipt of the representation of the MoS / Govt. servant thereon. Thus, the advice of the A.P.V.C. should be obtained both before arriving at the provisional conclusion and after receiving the representation of the MoS / Govt. servant on the findings of Inquiring Authority. (Para 4 (iii) / Chapter-II / Vigilance Manual Volume-I)

8. 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 imposeMajor Penalty	Major Penalty / Minor Penalty	Authority competent to impose Major Penalty
Authority who is competent toimpose 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

9. 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 9 of the A.I.S. (D&A) Rules, 1969 and Rule 21 of A.P.C.S. (CC&A) Rules, 1991 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.

10. 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

11. What precaution is necessary while forwarding the Inquiry Report to the Charged Officer?

Rule 9 (2) of the A.I.S. (D&A) Rules, 1969 and Rule 21 (2) of the A.P.C.S. (CC&A) Rules, 1991 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.

12. What is the time limit for passing of final order?

As per G.O.Ms.No.91 General Administration Department dated 12.09.2022, time limit for passing of final order after receipt of Inquiry Report is sixty four (64) days.

13. What is the role of Govt. after receipt of Inquiry Report from the Disciplinary Authority seeking the advice of Commission regarding acceptance of Inquiry Report (or) on penalties to be imposed?

The purpose for which the Disciplinary Authority forwards the file with Inquiry Report to Secretariat Department is to transmit it to the Vigilance Commission to solicit advice in the matter and to transmit that advice to the Disciplinary authority. Courts have held that consultation with the Vigilance Commission in such matters and advice of the Commission thereon are perfectly legal, but any decision taken by the Government at this stage would infringe upon the disciplinary authority's jurisdiction and vitiate the proceedings. As such, Govt. have no role to play either in the examination of Inquiry Report or on the penalties to be imposed. It is purely in the realm of Disciplinary Authority. It is also not legal to circulate the files to the Minister for orders in such cases, since Government are not the Disciplinary Authority. (Circular Memo.No.26/ SPL.C/A1/2004, dt:23.02.2004)

References:

1. Rule 9 of the A.I.S. (D&A) Rules, 1969.
2. Rule 21 of the A.P.C.S. (CC&A) Rules, 1991.
3. Chapter XXXII of the Vigilance Manual Volume-I.
4. Legal Citations on the subject "Action on Inquiry Report" at Sl.Nos.241 & 242 in 'Subject Index' of Vigilance Manual Volume-III.

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CHAPTER – XXIV

CONSULTATION WITH THE U.P.S.C. / A.P.P.S.C.

1. What is the provision under which consultation with the UPSC / APPSC 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 and on any other matter which the President, or, as the case may be the Governor of the State, may refer to them.

Regulation 5 of the Union Public Service Commission (Exemption from Consultation) Regulations, 1958 and Regulation 17 of the Andhra Pradesh Public Service Commission Regulations, 1963 relates to consultation with Commission in disciplinary cases.

In addition to the above, first proviso to Rule 6 (1) of the A.I.S. (DCRB) Rules, 1958 and Rule 9 (1) of A.P.R.P. Rules, 1980 provides that consultation with UPSC / APPSC is mandatory in all cases of withholding or withdrawing of pension. However, consultation with APPSC is not necessary, when the pensioner is found guilty in any judicial proceedings.

2. Based on the cumulative effect of the above stated provisions, what are the matters in which the UPSC / APPSC 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 / APPSC. 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 Central Government / State Government – orders imposing penalty, orders disposing off appeal, revision or review and memorials.

Consultation with APPSC is necessary in respect of following types of cases, as per clause (1) of regulation 17:

(a) where the State Government proposes to pass an original order imposing any of the major penalties;

(b) where the State Government propose to pass an order, on appeal or in revision against an order of a subordinate authority which results in the imposition of any penalty higher than the one imposed by a subordinate authority;

(c) where the State Government propose to allow a memorial or a petition against an order on appeal passed by a subordinate authority;

(d) where the State Government propose to review an order passed by them in consultation with the Commission; or

(e) where the State Government propose to pass an order under Article 351 or Article 351A of the Civil Service Regulations in the Andhra Pradesh Pension Code or under Rule 235 or Rule 239 of the Hyderabad Civil Service Rules Manual (corresponding to Rule 8 and Rule 9 of the Andhra Pradesh Revised Pension Rules, 1980

Needless to add the UPSC / APPSC is to be consulted in post retirement proceedings as well.

3. What are the matters in which the APPSC is not required to be consulted?

It is not necessary for the State Government to consult the A.P.P.S.C. in regard to cases mentioned in Regulation 17 (2) of the Andhra Pradesh Public Service Commission Regulations, 1963. (Item No. 15 – Extract of APPSC Regulations - Vigilance Manual Volume-IV).

4. What is the procedure for forwarding the cases to UPSC / APPSC?

The cases are to be forwarded as per the proforma prescribed for the purpose. The records as per the proforma are to be sent under the certificate by the Competent Authority to the effect that the case is complete in all respect. The proforma for referring the cases to UPSC is available in the website of UPSC. The proforma prescribed in Memo.No.670365/Ser.C/2018, G.A. (Ser.C) Dept., dt.06.11.2018 for referring the cases to APPSC is at Form -33 - Part-II of Vigilance Manual Volume-II.

5. What are the precautions to be observed in the matter of consultation with the UPSC / APPSC?

DOs and DON'Ts are available in the UPSC website

6. Does it necessary to consult APPSC in all cases where major penalty proposed to be imposed?

Consultation with the Public Service Commission under regulation 17 of the A.P. Service Commission Regulations, 1963 will be necessary only where the Departments of Secretariat at Government level propose to pass an original order of penalty and not where the order is passed by any other authority. (Memo. No. 32667/Ser.C/98-8, G.A. (Ser.C) Dept., dt.13.05.99)

7. What is the procedure to be followed if the Government decided to not accept / deviate from the advice of the Commission?

Where it is proposed to deviate from the advice tendered by the Public Service Commission, the case shall be submitted to the Chief

Minister through the Minister-in-charge before the issue of orders, as per item (ii) of Rule-14 of the Business Rules. The annual report of the Public Service Commission is placed before the State Legislature with a memorandum explaining cases where the advice of the Commission was not accepted giving reasons for non-acceptance, as per Article 323(2) of the Constitution.

8. Is non-consultation of Commission before imposing major penalty will vitiate the proceedings?

The consultation prescribed by sub-clause (3) (c) of Article 320 of the Constitution is to afford proper assistance to the Government in assessing the guilt or otherwise of the delinquent official as well as the suitability of the penalty to be imposed. Opinion of the Public Service Commission is only advisory and it is not binding on the disciplinary authority. Consultation with the Public Service Commission is not mandatory and is only directory. Absence of consultation or any irregularity in consultation does not afford *the delinquent government servant* a cause of action in a court of law. (A.N.D'silva vs. Union of India, AIR 1962 SC 1130; U.R. Bhatt vs. Union of India, AIR 1962 SC 1344; Union of India (UOI) and Ors. vs. T.V. Patel (2007(6)SCALE 9) and Union of India and another Vs. S.K. Kapoor (2011 (3) SCALE 586) of Hon'ble Supreme Court of India)

References:

1. Chapter-XXXV of the Vigilance Manual Volume-I.
2. Circulars on the subject "Consultation with U.P.S.C. / A.P.P.S.C." at Sl.Nos.254-256 in List of Subjects-cum-Index" in Part I of the Vigilance Manual Volume-II.
3. Form No.33 – Part II of the Vigilance Manual Volume II.
4. Legal citations on the subject "Consultation with U.P.S.C. / A.P.P.S.C." at Sl.No.391 in "Subject Index" of the Vigilance Manual Volume-III.
5. Extract of APPSC Regulations - Item No. 15 in Vigilance Manual Volume-IV.

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CHAPTER – XXV

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 A.I.S. (Conduct) Rules, 1968 and the A.P.C.S. (Conduct) Rules, 1964 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.

In the case of Bhagwat Parshad vs. I.G. of Police [AIR 1970 P&H 81] [Decision No.115 – Vigilance Manual Volume-III], the Punjab & Haryana High Court observed as follows:

> "Misconduct is a generic term and means to conduct amiss; to mismanage; wrong or improper conduct; bad behaviour; unlawful behaviour or conduct. It includes malfeasance, misdemeanour, delinquency and offence. The term misconduct does not necessarily imply corruption or criminal intent..... human conduct or behaviour cannot be graded and there can be no precise scale of graduation in order to arithmetically compare the gravity of one from other".

One significant aspect of the A.I.S. (D&A) Rules, 1969 and the A.P.C.S. (CC&A) Rules, 1991 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 A.I.S. (D&A) Rules, 1969 and the A.P.C.S. (CC&A) Rules, 1991 are conspicuously silent about the quantum of penalty that may be imposed for any misconduct. Rule 6 of the A.I.S. (D&A) Rules, 1969 and Rule 9 of the A.P.C.S. (CC&A) Rules, 1991 provides as under:

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:-

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Thus, the appropriateness and sufficiency of reasons for imposition of penalty has been left to the discretion of the authority concerned.

In the case of State of Orissa vs. Bidyabhushan Mahapatra [AIR 1963 SC 779] [Decision No.60 – Vigilance Manual Volume-III], the Supreme Court observed that the court, in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induced the punishing authority, if there has been an inquiry consistent with the prescribed rules, are not justiciable".

In the case of Nagaraj Shivarao Karjagi vs. Syndicate Bank [AIR 1991, SC 1507], the Supreme Court held that "there cannot be any uniform policy with regard to different disciplinary matters and much less there could be any policy in awarding to the Delinquent Officers in different cases. The penalty to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. No third party could dictate the Disciplinary Authority or the Appellate Authority as to how, they should exercise their power and what penalty they should impose on the Delinquent Officer.

In U.O. Note No.23552/Ser.C/97-1, G.A. (Ser.C) Dept., dt.07.05.1997 (Cir.No.307 / Vigilance Manual Volume–II), Government have requested the Disciplinary / Appointing Authorities to keep in view the observations of A.P.A.T. / Supreme Court of India / Law Department that there shall be clear application of mind to the evidence available, before coming to the conclusion on the quantum of punishment proposed to be imposed on the delinquent officer.

2. Are the A.I.S. (D&A) Rules, 1969 / the A.P.C.S. (CC&A) Rules, 1991 and the instructions issued thereunder completely silent about the quantum of penalty?

Only indication about the quantum of penalty is available in Rule 6 of the A.I.S. (D&A) Rules, 1969 and Rule 9 of the A.P.C.S. (CC&A) Rules, 1991, which are as follows:-

Provisos to the clauses (viii) and (ix) of Rule 6 of the A.I.S. (D&A) Rules, 1969 states that "every case in which the charge of possession of the assets disproportionate to the known sources of income or [DP&T's Notification No.110/5/2000-AIS (III), dt.04.04.2002 (GSR No.118, dt.13.04.2002)] 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) [removal from service] or clause (ix) [dismissal from service] shall be imposed. In any exceptional case and for special reasons recorded in writing any other penalty may be imposed.

Proviso to the clause (x) of Rule 9 of A.P.C.S. (CC&A) Rules, 1991 [G.O.Ms.No.458, G.A. (Ser.C) Dept., dt.22.09.2009 (Cir.No.545 / Vigilance Manual Volume-II)], states that in all proved cases of misappropriation, bribery, bigamy, corruption, moral turpitude, forgery and outraging the modesty of women, the penalty of dismissal from service shall be imposed.

Proviso to clause (ix) of Rule 9 of A.P.C.S. (CC&A) Rules, 1991 [G.O.Ms.No.127, G.A. (Ser.C) Dept., dt.15.09.2017 – Cir.No.584 / Vigilance Manual Volume-II] states that in the charge of absent from duty without authorization for a period of exceeding one year; or remains absent from duty for a continuous period exceeding 5 years with or without leave; or continues on foreign service beyond the period approved by the State Government, the penalty of removal from service shall be imposed.

3. What are the guidelines available to the Disciplinary Authority in deciding the quantum of penalty?

The following guidelines provided by the Hon'ble Supreme Court regarding 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 penalty 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 1st 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 penalty 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 penalty, 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."

In Swinder Singh vs. Director, State Transport, Punjab [1988 (7) SLR P&H 112] [Decision No.295 – Vigilance Manual Volume-III], the petitioner and Harminder Singh were working as Asst. Fitters in the Punjab Roadways workshop at Taran Taran. They were dealt with for unauthorisedly taking out a bus at midnight and they both admitted having committed a blunder. They were given a show cause notice of termination of services and the General Manager terminated their services. The appeal filed by the petitioner was dismissed, while that of Harminder Singh was partly accepted and his punishment reduced to stopping of two annual increments with cumulative effect. The High Court of Punjab & Haryana held that it is a case of discrimination as the petitioner as well as Harminder Singh had equally contributed to their misconduct in taking out the bus of the State during the night. No special reasons were assigned for giving a severe punishment to the petitioner than the one awarded to Harminder Singh earlier. The order of the Appellate Authority is violative of Art. 14 of the Constitution.

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.

In G.O.Ms.No.578, G.A. (Ser.C) Dept., dt.17.09.1968, while communicating the above instructions, the G.A. (Ser.C) Department have clarified that, if past bad record is proposed to be taken into account in determining the penalty to be imposed, it should be made subject matter of a specific charge in the charge sheet itself. If it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the disciplinary authorities, and / or at the time of imposition of penalty.

Needless to add, there can be no bar on taking into account the past good conduct of the charged officer and reducing the penalty.

In the case of State of Mysore vs. Manche Gowda [AIR 1964 SC 506] [Decision No.71 – Vigilance Manual Volume-II], the Supreme Court observed that the court cannot accept *the doctrine of 'presumptive knowledge' or that of 'purposeless enquiry', as their acceptance will be subversive of the principle of 'reasonable opportunity'. Nothing in law prevents the punishing authority from taking the previous record of the Govt. servant into consideration during the second stage of the enquiry even though such previous record was not the subject-matter of the charge at the first stage, for essentially it relates more to the domain of punishment rather than to that of guilt. The Supreme Court held that it is incumbent upon the authority to give the Government servant at the second stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is also based on his previous penalties or his previous bad record, this should be included in the second notice that he may be able to give an explanation'.*

6. Under what circumstances the quantum of penalty may be perceived as excessive and disproportionate?

It is the settled law that the Administrative Tribunal or the High Court should not interfere with the decision of the disciplinary authorities except where the penalty is disproportionate and shocks the judicial

conscience, as reiterated by the Supreme Court in Director General, R.P.F. vs. Ch.Sai Babu [2003 (4) Supreme 313], setting aside the decision of the Division Bench of the Andhra Pradesh High Court holding that "normally the punishment proposed by the disciplinary authority should not be disturbed by High Court or Tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be maintained, and the department / establishment in which it is found that the punishment imposed is shockingly disproportionate, High Courts or Tribunals may remit the cases to the disciplinary authority for reconsideration on the quantum of punishment". [Memo.No.107309/ Ser.C/2003, G.A. (Ser.C) Dept., dt.03.09.2003] [Para-17 / Chapter-XXIII / Vigilance Manual Volume-I]

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. [AIR 2010 SC 75, JT 2009 (11) SC 472, (2009)15 SCC 620] 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. [AIR 2004 SC 2131, JT 2004 (3) SC 384, (2004) 4 SCC 560, [2004] 3 SCR 1, 2004 (2) SLJ 460 (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 Authority 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 organization? 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 C.V.C. / A.P.V.C. 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 11th 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.

Vide G.O.Ms.No.2, G.A. (Ser.C) Dept., dt.04.01.1999, Government directed that in all proven cases of misappropriation, bribery, bigamy, corruption, moral turpitude, forgery, outraging the modesty of women, the penalty of dismissal from service should be imposed.

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.

References:

1. Chapter-XXIII of the Vigilance Manual Volume-I.
2. The A.I.S. (D&A) Rules, 1969.
3. The A.P.C.S. (CC&A) Rules, 1991.
4. Circulars on the subject "Quantum of Penalty" at Sl.Nos.208-216 in List of Subjects-cum-Index" in Part I of the Vigilance Manual Volume-II.
5. Legal citations on the subject "Quantum of Penalty" at Sl.Nos.331-336 in "Subject Index" of the Vigilance Manual Volume-III.

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CHAPTER – XXVI

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.

While drafting penalty orders, ensure that it should contain context, contention, consideration and conclusion to avoid interference by Courts i.e., a reasoned decision in the form of speaking order.

Nemo debet esse judex in propria causa" and "Audi alterem partem" are two pillars of natural justice. Speaking order or reasoned order is considered the third pillar of natural justice. A reasoned decision is called a reasoned decision because it contains reasons of its own in its support. When the adjudicating body provides the reason behind its decision, the decision is treated as the reasoned decision.

It is also called the speaking order, as the order speaks for itself in such a way that it tells a reasonable story of its own. Speaking orders are essential for judicial review. The party or the parties must know why and on what grounds an order has been passed against him. This is the new principle of natural justice that has been recognized in India and the USA, but it is yet to be recognized under English law.

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 reserve judgments when the arguments are concluded and they are 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. The A.I.S. (Conduct) Rules, 1968 and the A.P.C.S. (Conduct) Rules, 1964 require that such instructions should be confirmed through written instructions as soon as possible.

Speaking order introduces fairness in the administrative power. It helps in minimizing arbitrariness and excluding to the extent it can. It maintains the right for reason as what is the reason behind any order, which is an indispensable part of a sound judicial system. It is the best practice of good administration. A quasi-judicial authority must record its reasons in support of its conclusion. The purpose of recording the reasons is to serve the wider aspect of the principle of natural justice that justice must not only be done, but must also be seen to be done.

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

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, these 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 or 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 8 (9) (a) of A.I.S. (D&A) Rules, 1969 & Rule 20 (5) (c) of A.P.C.S. (CC&A) Rules, 1991].

Similarly, Rule 10 (1) (b) of the A.I.S. (D&A) Rules, 1969 and the Rule 22 (1) (b) of A.P.C.S. (CC&A) Rules, 1991 provides that for imposing a minor penalty, the provisions of rule 8 (4) to (23) of the A.I.S. (D&A) Rules, 1969 and rule 20 (3) to (18) of the A.P.C.S. (CC&A) Rules, 1991 may be followed if "the 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. Decision making authority may consider stating that the delinquent official has not justified the engagement of legal practioner and that the special circumstances 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 background 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.

The recorded reasons are subject to judicial scrutiny. As against the arbitrary exercise of power by the adjudicating authority, this doctrine stands as an important safeguard. If the reasons recorded in support of the conclusion reached are found to be unclear or irrelevant or incorrect, such order passed by the authority may be set aside. Hence, the reasons recorded must not just be read in letter and spirit but also must be clear, explicit, and intelligible in order to show that they have considered the material facts and other relevant facts before coming to the conclusion.

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

It is pertinent to mention here that in A.P.C.S. (CC&A) Rules, 1991, clause (iii) under Rule 9 (recovery from pay) was omitted by G.O.Ms.No.335, G.A. (Ser.C) Dept., dt.04.08.2005).

(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 of 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.

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CHAPTER – XXVII

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. In respect of A.I.S. Officers, another remedy i.e., memorial to the President, is available.

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 departmental remedies?

Relative position of the departmental remedies may be briefly stated as under:

FACTOR	APPEAL	REVISION	REVIEW	MEMORIAL
By Whom	Appellate Authority	Includes Appellate Authority	Central Government / State Government	President(In respect of A.I.S. Officers)
How	On appeal by the Individual	On own motion or otherwise	On own motion or otherwise for AIS officers/ on a reference made by HOD for	On own motion

			State Government Employees	
When	45 days for A.I.S. Officers / 90 days for State Govt. employees	180 days for A.I.S. Officers / (1) year for State Govt. employees or (4) years for State Government	Any time / (3) years for State Govt.	Any time
Condition	—	Either suo-moto or otherwise	New material	Any time

Detailed discussion of these 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 15 and 16 of the A.I.S. (D&A) Rules, 1969 and Rule 32 and 33 of the A.P.C.S. (CC&A) Rules, 1991 provide what are the orders against which appeal lies and otherwise. The same is as under:

(a) As per Rule 15 of the A.I.S. (D&A) Rules, 1969 and Rule 32 of the A.P.C.S. (CC&A) Rules, 1991, no appeal lies against the following orders:

(i) any order made by the President / Governor;

(ii) 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;

(iii) any order passed by an Inquiring Authority in the course of an inquiry under Rule 8 of the A.I.S. (D&A) Rules, 1969 and Rule 20 of A.P.C.S. (CC&A) Rules, 1991.

(b) Rule 16 of the A.I.S. (D&A) Rules, 1969 and Rule 33 of the A.P.C.S. (CC&A) Rules, 1991 provides that subject to Rule 15 and Rule 32 respectively, the following orders are appealable:

(i) an order of suspension made or deemed to have been made under Rule 3 of the A.I.S. (D&A) Rules, 1969 and Rule 8 of the A.P.C.S. (CC&A) Rules, 1991;

(ii) an order imposing any of the penalties specified in Rule 6 of the A.I.S. (D&A) Rules, 1969 and Rule 9 or Rule 10 of the A.P.C.S. (CC&A) Rules, 1991, whether made by the disciplinary authority or by any appellate or revising authority;

(iii) an order enhancing any penalty, imposed under Rule 9 or Rule 10 of the A.P.C.S. (CC&A) Rules, 1991;

(iv) an order discharging him / her in accordance with the terms of his / her contract if he has been engaged on a contract for fixed or for an indefinite period and has rendered under either form of contract, continuous service for a period exceeding five years at the time when his / her services are so discharged;

(v) an order reducing or withholding the maximum pension, including an additional pension, admissible to him under the rules governing pension.

(vi) subject to the provisions of Rule 32 of A.P.C.S. (CC&A) Rules, 1991, an order passed by an authority subordinate to the Government (i) varying to his / her disadvantage his / her conditions of service, pay, allowances or pension as regulated in rules or in a contract of service; and (ii) interpreting to his / her disadvantage the provisions of any rules or contract of service whereby his

conditions of service, pay, allowances or pension are regulated.

(vii) an order of a State Government against A.I.S. Officers which-

(a) denies or varies to his disadvantage his / her pay, allowances, pension or other conditions of service as regulated by rules applicable to him / her; or

(b) interprets to his disadvantage the provisions of any such rule; or

(viii) an order-

(a) stopping him at the efficiency bar in the time-scale of pay on the ground of his / her 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) determining the subsistence and other allowances to be paid to him / her for the period of suspension or for the period during which he / she is deemed to be under suspension or for any portion thereof; or

(d) determining his / her pay and allowances-

(i) for the period of suspension, or

(ii) from the date of dismissal, removal or compulsory retirement from service, or from the date of reduction to a lower grade, post, time-scale of pay or stage in a time-scale of pay, to the date of reinstatement or restoration to be

paid to him on his / her reinstatement or restoration; or

(e) determining whether or not the period from the date of suspension or from the date of dismissal, removal, compulsory retirement or reduction to a lower grade post, time-scale of pay or stage in a time-scale of pay to the date of his reinstatement or restoration shall be treated as a period spent on duty for any purpose.

4. Who is the Appellate Authority?

According to Rule 19 of the A.I.S. (D&A) Rules, 1969, Central Government is the Appellate Authority in respect of the A.I.S. Officers.

In respect of State and Sub-ordinate Service Officers, Appellate Authority has been mentioned in the Rule 34 of the A.P.C.S. (CC&A) Rules, 1991. 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 24 of the A.P.C.S. (CC&A) Rules, 1991 appeal shall lie to the authority to which the authority functioning as the disciplinary authority for the purpose of that proceeding is immediately subordinate.

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. What is the time limit for preferring the appeal?

Rule 17 of the A.I.S. (D&A) Rules, 1969 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.

Rule 35 of the A.P.C.S. (CC&A) Rules, 1991 prescribes a limitation period of 90 days for preferring appeal from the date on which a copy of the order appealed against is delivered to the appellant.

8. What is the form and content of appeal?

Rule 18 of the A.I.S. (D&A) Rules, 1969 provide as under:

(1) Every person preferring an appeal shall do so separately and in his own name .

(2) Every appeal preferred under these rules shall be addressed to the Secretary to the Government of India in the Department or the Ministry, as the case may be, dealing with the A.I.S. concerned and shall-

(a) contain all material statements and arguments relied on by the appellant;

(b) contain no disrespectful or improper language; and

(c) be complete in itself.

Rule 36 of the A.P.C.S. (CC&A) Rules, 1991 provides as under:

(1) Every person preferring an appeal shall do so separately and in his own name.

(2) The appeal shall contain all material statements and arguments relied on by the appellant and shall be complete in itself, and shall not contain any disrespectful or improper language. It 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.

(3) 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.

9. What is the role of the authority that has made the order appealed against?

Rule 18 (4) of the A.I.S. (D&A) Rules, 1969 provides that the authority which made the order appealed against shall, on receipt of a copy of every appeal, which is not withheld under rule 21, forward the same with its comments thereon together with the relevant records to the appellate authority within thirty days from the receipt of the appeal by the State Governments and without waiting for any direction from the Central Government; and if the original appeal along with the comments of the State Government is not received by the Central Government within stipulated period, the Central Government shall take a decision on the advance copy of the appeal received by them.

Rule 36 of the A.P.C.S. (CC&A) Rules, 1991 provides that 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.

10. What is the general approach prescribed for disposing of appeals?

Rule 19 (1) and (2) of the A.I.S. (D&A) Rules, 1969 and Rule 37 (1), (2) and (3) of the A.P.C.S. (CC&A) Rules, 1991 provides an elaborate procedure for disposing of appeals against orders of suspension and orders imposing any of the penalties specified in Rule 6 of the A.I.S. (D&A) Rules, 1969 and Rule 9 and 10 of the A.P.C.S. (CC&A) Rules, 1991.

These Rules do not provide that an order passed in appeal should be a speaking order. The Rules however require that the appellate authorities should pass such orders which appear to be just and equitable, having regard to all the circumstances of the case.

In the case of R.P. Bhatt vs. Union of India [1985(3) SLR SC 745] [Decision No.242 – Vigilance Manual Volume-III], the Supreme Court

observed that "in disposing of the appeal, the Director General has not applied his mind to the requirement of rule 27 (2) of the Central Civil Services (CCA) Rules, 1965. The word 'consider' therein implies 'due application of mind'. The appellate authority is required to consider: (i) whether the procedure laid down in the rules has been complied with; and if not whether such non-compliance has resulted in violation of any provision of the Constitution or failure of justice; (ii) whether the findings of the disciplinary authority are warranted by the evidence on record; and (iii) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty or may remit back the case to the authority which imposed the same. The rule casts a duty on the appellate authority to consider these three factors".

In another case of Ram Chander vs. Union of India [1986(2) SLR SC 608] [Decision No.257 – Vigilance Manual Volume-III], the Supreme Court observed that a fair hearing or the observance of natural justice implies 'the duty to act judicially', and natural justice does not require that there should be a right of appeal from any decision and there is no right of appeal against a statutory authority unless the statute so provided.

The High Court of Karnataka, in the case of Chairman, NIMHANS vs. G.N. Tumkur [1988(6) SLR KAR 25] [Decision No.288 – Vigilance Manual Volume-III], held that the appellate authority disposing of the appeal in one sentence holding that "there is no merit in the appeal' is illegal and that the order must be a speaking order.

11. What are the factors to be considered in dealing with the appeal relating to orders made under the A.I.S. (D&A) Rules, 1969 & the A.P.C.S. (CC&A) Rules, 1991?

As regards the appeal against orders imposing any of the penalties specified in Rule 6 of the A.I.S. (D&A) Rules, 1969 and in Rule 9 or Rule 10 of the A.P.C.S. (CC&A) Rules, 1991, the Appellate Authority shall consider the following three aspects [Rule 19 (1) & (2) of the A.I.S. (D&A) Rules, 1969 and Rule 37 (2) & (3) of A.P.C.S. (CC&A) Rules, 1991:

(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;

As regards the appeal against the orders of suspension, Rule 37 (1) of the A.P.C.S. (CC&A) Rules, 1991 provides that the Appellate Authority is required to consider "whether in the light of the provisions of Rule 8 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly."

12. Is it necessary to consult A.P.VC. at the time of disposal of Appeal, Revision and Review?

According to Government instructions in U.O.Note No.98/Spl.C/A1/2009, G.A. (Spl.C) Dept., dt.22.07.2009 [Cir.No.542 / Part-I of Vigilance Manual Volume-II], it is necessary to consult the A.P.V.C., while considering the Appeals, Revision and Review of the final orders issued in disciplinary cases and criminal cases.

Further, vide U.O.Note No.GAD01-POLL0VAC/2/SC.F/A1/2019-1, G.A. (SC.F) Department, dt.11.09.2019 [Cir.No.592 / Part-I of Vigilance Manual Volume-II], Government have reiterated the instructions and accordingly informed all the Departments of Secretariat that the Appellate and Revision Authorities should invariably obtain the advice of the A.P.V.C. while dealing with the Appeals, Revision and Review of final orders issued in disciplinary cases and criminal cases, having vigilance angle.

13. What are the possible outcomes in the case of appeal against an order imposing penalty?

Rule 19 (1) & (2) of the A.I.S. (D&A) Rules, 1969 and Rule 37 (2) & (3) of A.P.C.S. (CC&A) Rules, 1991 provides that 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.

14. 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 8 of the A.I.S. (D&A) Rules, 1969 and under Rule 20 of the A.P.C.S. (CC&A) Rules, 1991 has not already been held in the case, the Appellate Authority shall, subject to the provisions of Rule 14 and Rule 25 respectively, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 8 and Rule 20 of the respective rules.

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.

Procedure prescribed under Rule 19 (1) & (2) of the A.I.S. (D&A) Rules, 1969 and Rule 37 (2) & (3) of A.P.C.S. (CC&A) Rules, 1991 to be followed wherever necessary in case of Appeal Petition.

In the case of Krishan Gopal Sharma vs. Union of India & Ors. [1979 (03) SHI CK 0006], the High Court of Himachal Pradesh held that,-

> "the contention of the Petitioner is that the punishment which was awarded on him, has been reviewed by the Director under Rule 29 [Central Civil Services (CC&A) 1965]. But, before going into this question the Director was obliged under the terms of the proviso to Rule 29 to hold a fresh and de novo enquiry under Rule 14.
>
> Original proceedings have been initiated under Rule 14 with a view to impose any of the major penalties covered by clause (v) to (ix) of Rule 11 is find that on proper reading of the proviso, a fresh and de novo inquiry under Rule 14 is not necessary if such an inquiry is once held by the Department".

15. Is it necessary to provide personal hearing while dealing with appeal?

The A.I.S. (D&A) Rules, 1969 and the A.P.C.S. (CC&A) Rules, 1991 do not provide for a personal hearing at the appeal stage.

There is a conflict of judicial opinion on the point, whether, personal hearing should be given by the Appellate Authority to the appellant.

Case Laws:

(1) The departmental proceedings are only quasi-judicial proceedings. All the procedure of an ordinary trial or proceedings in a Court of Law is not applicable. The principle obtainable in the Court of Law even at the stage of appeal the right of personal hearing is a necessary right to do justice between the parties cannot be bodily applied to departmental inquiries which are not bound to follow all the procedure and requirement of a judicial trial or proceedings. [State of Gajarat vs. P.B.Ramalbhai - AIR 1969 Guj 260]

(2) Where an appeal is preferred by the Government servant against the order of the disciplinary authority, it is not necessary that he should be given personal hearing at that stage. [F.N.Roy vs. Collector of Customs, Calcutta – AIR 1957 SC 648]

(3) The proceedings before an appellate authority are continuation of the proceedings before the enquiry officer and both these proceedings taken together point to the conclusion. That the guarantee under Article 311 is satisfied and the failure to give a personal hearing to the petitioner in appeal by itself will not render proceedings illegal. [Bindanath vs. State of Assam – AIR 1959 Assam 112]

(4) Unless statutory rules so require or a specific prayer for personal hearing is made by the appellant in writing in the petition of appeal itself, it is not incumbent on the

appellant authority to afford a personal hearing to a person aggrieved against an order imposing punishment on him in departmental proceedings. [Vijay Singh Yadav vs. State of Haryana and others – 1971 SLR 720 (Panjab & Haryana)]

(5) Where the rules are silent regarding personal hearing but an opportunity is demanded by the delinquent official before the Appellant Authority to represent his case, such a request should not be refused, as it violates principles of natural justice. [Ranjit Singh vs. Inspector of Police and others – 1979 AISLJ 57 (Punj)]

16. What is the manner of disposal of appeals in the cases wherein inquiry was dispensed with under Rule 14 (ii) of the A.I.S. (D&A) Rules, 1969 and Rule 25 (ii) of the A.P.C.S. (CC&A) Rules, 1991?

As held by the Hon'ble Supreme Court in Tulsi Ram Patel case [AIR] 1985 SC 1416, (1985) 3 SCC 398, [1985] Supp 2 SCR 131, 1985 (2) SLJ 145 (SC)] [Decision No.240 – Vigilance Manual Volume-III]

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.

17. Who is responsible for the implementation of the orders in disposing of the appeal?

Rule 20 of the A.I.S. (D&A) Rules, 1969 provides that every order passed by the Central Government in appeal under any of the relevant provisions of these rules shall be final and the State Government concerned shall forthwith give effect to such order.

Rule 39 of the A.P.C.S. (CC&A) Rules, 1991 provides that the authority which made the order appealed against shall give effect to the orders passed by the Appellate Authority.

18. What remedies are available to the employee other than appeal?

In respect of A.I.S. Officers, Revision, Review and Memorials are three more remedies open to them. The said remedies are provided under Rules 24, 24A and 25 of the A.I.S. (D&A) Rules, 1969.

Revision and Review are two more remedies open to the Government employees. These are provided under Rules 40 and 41 of the A.P.C.S. (CC&A) Rules, 1991.

19. What are the features of Revision?

Following are 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 24 (1) of the A.I.S. (D&A) Rules, 1969 and Rule 40 of the A.P.C.S. (CC&A) Rules, 1991 can carry out revision

(c) Power of revision may be exercised either suo-moto or otherwise

(d) U.P.S.C. / A.P.P.S.C. 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.

20. Is there any time limit for Revision?

Rule 24 (1) of the A.I.S. (D&A) Rules, 1969 restricts the time for taking up revision to within (6) months from the date of the order passed in appeal and where no such appeal had been preferred, within one year of the original order wihch gives the cause of action.

Rule 40 (1) (iv) of the A.P.C.S. (CC&A) Rules, 1991 provides that the competent authority may exercise the power of revision suo-motu within 4 years from the date of issue of order of penalty or within one year of the date of receipt of the petition.

21. What are the distinguishing features between Review and Revision?

Power of Revision under Rule 24 of the A.I.S. (D&A) Rules, 1969, vested only with the Central Government or the State Government in respect of A.I.S. Officers.

Rule 24-A of the A.I.S. (D&A) Rules, 1969 provides that the Central Government may at any time, either its own motion or otherwise, review any order passed under these rules, when any new material or evidence, which could not be produced or was not available at the time

of passing the order under Review and which has the effect of changing the nature of the case, has come, or has been brought, to its notice.

Rule 40 of the A.P.C.S. (CC&A) Rules, 1991 provides that power of revision has been vested with the Government or Head of the Department or Appellate Authority or any other authority specified in this behalf by the Government and can be carried out by on own motion or otherwise.

The Government may exercise the power to review any order passed under Rule 41 of the A.P.C.S. (CC&A) Rules, 1991 only on the reference made by the Head of the Department, when any new material or evidence, which could not be produced or was not available at the time of passing the order under Review and which has the effect of changing the nature of the case, has come, or has been brought, to its notice.

22. 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.

23. What are the possible outcomes of Review?

Rule 24-A of the A.I.S. (D&A) Rules, 1969 & Rule 41 of A.P.C.S. (CC&A) Rules, 1991 provides that under the conditions prescribed therein, the Central Government in respect of A.I.S. Officers and State Government in respect of State Government employees, may review any order. The scope of the power of review has not been elaborated. Hence it must be assumed that the Central Government or the State Government, as the case may be, has full powers to pass appropriate orders in the matter. Proviso to Rule 24-A and Rule 41 of the respective rules makes it amply clear that the power of review includes the power of imposing and enhancing penalty subject to provision of reasonable opportunity.

24. What are the features of Memorials?

Rule 25 of the A.I.S. (D&A) Rules, 1969 provides that the A.I.S. Officers shall be entitled to submit a memorial to the President against

any order of the Central Government or the State Government by which he is aggrieved.

25. What are the limitations in submitting Memorials?

The following provisos to Rule 25 (1) of the A.I.S. (D&A) Rules, 1969 are the limitations to submit Memorials:

(a) no memorial shall lie against any order which is interlocutory in nature or of the nature of step-in-aid for final disposal of disciplinary proceedings;

(b) such memorial shall be submitted only after all other remedies provided in these rules, including appeal, review and revision have been exhausted;

(c) such memorial shall be submitted within a period of ninety days, from the date of passing of an order in any appeal, review or revision, as the case may be, by the Central Government or the State Government as the case may be.

References:

1. Chapter-XXXIII of the Vigilance Manual Volume-I.
2. The A.I.S. (D&A) Rules, 1969.
3. The A.P.C.S. (CC&A) Rules, 1991.
4. Circulars on the subject “Appeal, Revision & Review” at Sl.No.365 in “List of Subject-cum-Subject Index” in Part-I of the Vigilance Manual Volume-II.
5. Legal citations on the subject “Appeal, Revision & Review” at Sl.Nos.15 & 412 in “Subject Index” of the Vigilance Manual Volume-III and other relevant legal decisions.

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CHAPTER – XXVIII

ACTION ON RECEIPT OF COURT ORDERS

1. What are the various court orders relevant to the context of disciplinary proceedings?

Members of Service / 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 / AoCs

(d) Stay of the inquiry

(e) Setting aside the order of the Disciplinary Authority or Appellate Authority on imposing penalty

(f) implement the Inquiring Authority report

(g) disposal of representation before the Disciplinary Authority or Appellate Authority

(h) to conclude disciplinary proceedings expeditiously.

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. [Memo.No.107309/Ser.C/2003, G.A. (Ser.C) Dept., dated 03.09.2003]

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.

Where appeal has to be filed in Supreme Court of India (SCI), the concerned authority may approach the Advocate on Record (AOR) to obtain early orders in SCI [Para-4 under Chapter-XXXVI of Vigilance Manual Volume-I]

The Heads of Departments shall furnish the list of cases where the High Court issued interim orders on suspension of Accused Officers to the Bureau for taking further action i.e., filing Writ Appeals / to get interim orders vacated. [Circ. No.374/Spl.C/A1/2010-1, G.A. (Spl.C) Dept., dated 03.07.2010]

The High Court of Andhra Pradesh observed that if no stay is granted by the Supreme Court after admitting the appeal the Judgment of the lower court operates and it should be given effect to. Govt. issued orders accordingly. [Memo.No.16556/LSP/87-1, Law Dept., dated 14.12.1987)

The Supreme Court, in one of the Appeals, while setting aside the Division Bench decision of the Andhra Pradesh High Court and held that "Normally, the punishment imposed by disciplinary authority should not be disturbed by High Court or Tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly; or shockingly disproportionate and where it is found that the punishment imposed is shockingly disproportionate, High Courts or Tribunals may remit the cases to the disciplinary authority for reconsideration on the quantum of punishment". Accordingly, Government have requested all the Departments of Secretariat, Heads of Departments and the Government Pleaders to examine the Tribunal and the High Court decisions whether they are strictly in conformity with the above ruling, and take immediate steps to appeal against any such decisions. [Govt. Memo. No.107309/Ser.C./2003, G.A. (Ser.C) Dept., dated 03.09.2003]

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 two months. As per the WRIT proceedings Rules, 1977 (HC): Unless the court otherwise directs, the direction or order made or the rule absolute issued by the High Court shall be implemented within two months of the receipt of the orders. Otherwise, the matter leads to Contempt of Court.

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 recovery of pecuniary loss, recovery if in progress should be stopped forthwith; past recoveries made, if any, must be refunded to the Member of Service / 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 MOS / 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 the Rule 5 of the A.I.S. (D&A) Rules, 1969 / Rule 8 (4) of the A.P.C.S. (CC&A) Rules, 1991 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 Member of Service / 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 MOS / Employee, the MOS / 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 pensionery 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 MOS / 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 MOS / Employees.

5. What are the two different kinds of grounds under which the penalty may be set aside?

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 MOS / 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 MOS / Employee from the date of dismissal, removal from service or compulsory retirement 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 3 (5) of the A.I.S. (D&A) Rules, 1969 and Rule 8 (4) of the A.P.C.S. (CC&A) Rules, 1991, 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).

Back wages to a suspended / dismissed MOS / Employee cannot be paid as a matter of right, except in cases where the employee has been acquitted by the courts on merits.

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

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 on duty for all purposes and full back wages will be paid under FR 54 – A (3).

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 setting aside the penalty is not on merit, the MOS / Government servant is not entitled for back wages / full pay and allowances.

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.

References:

1. Chapter-XXXVI of the Vigilance Manual Volume-I.
2. Circulars on the subject “Action on receipt of Court Orders” at Sl.Nos.118 & 119 in “List of Subject-cum-Subject Index” in Part-I of the Vigilance Manual Volume-II.

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CHAPTER – XXIX

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 vs. 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 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 vs. 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.

5. 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

6. 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 vs. Wednesbury Corporation*, where it was first imposed.

7. 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

8. 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. [AIR 2006 SC 1748, JT 2006(4) SC 404, (2006)4SCC713, 2006(3) SLJ 211 (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. vs. 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 vs. Union of India and Ors. MANU/SC/0120/1957: (1959) ILLJ167SC and State of Uttar Pradesh vs. 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 vs. 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 vs. 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. vs. 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. vs. Prakash Chand Jain MANU/SC/0416/1968 : (1969)IILLJ377SC , Kuldeep Singh vs. Commissioner of Police and Ors. MANU/SC/0793/1998 : (1999)ILLJ604SC]

22. We may notice that this Court in Ramendra Kishore Biswas vs. 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. vs. 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*** *vs.* ***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.

9. 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.

10. Can the Courts or Tribunals modify the penalties awarded by the Disciplinary Authorities?

9. In Om Kumar and Ors. vs. 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."

11. If a violation of a statutory provision or principle of natural justice during 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.

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CHAPTER – XXX

SAMPLE FORMS

Forms & Check Lists prescribed for issue of orders by Competent Authorities regarding Disciplinary Proceedings in Vigilance Manual Volume–II

(The Disciplinary Authorities are requested to verify these as and when required)

8.	Order of revocation of suspension order under Rule 8 (5) (c) of A.P.C.S. (CC&A) Rules, 1991.	932	II
9.	Check list on suspension	933	II
10.	Memorandum of charge for minor penalty proceedings under Rule 22 of A.P.C.S. (CC&A) Rules, 1991.	934	II
11.	Memorandum of Articles of charge etc. for major penalty proceedings under Rule 20 of A.P.C.S. (CC&A) Rules, 1991.	934	II
12.	Order of appointment of Inquiring Authority under Rule 20 (2) of A.P.C.S (CC&A) Rules, 1991.	937	II
13.	Order of appointment of Presenting Officer under Rule 20 (5) (c) of A.P.C.S. (CC&A) Rules, 1991.	938	II
14.	Order of appointment of successor Inquiry Officer under Rule 20 (2) read with Rule 20 (22) of A.P.C.S. (CC&A) Rules, 1991.	938	II
15.	Minor penalty proceedings under Rule 22 of A.P.C.S (CC&A) Rules, 1991, where disciplinary authority decides to hold inquiry.	939	II
16.	Order for taking disciplinary action in Common Proceedings under Rule 24 of A.P.C.S (CC&A) Rules, 1991.	942	II
17.	Order of appointment of Inquiring Authority in Common Proceedings	943	II

	under Rule 20 (2) read with Rule 24 of A.P.C.S (CC&A) Rules, 1991.		
18.	Order of appointment of Presenting Officer in Common Proceedings under Rule 20 (5) (c) read with Rule 24 of A.P.C.S (CC&A) Rules, 1991.	943	II
19.	Notice to witness to attend departmental inquiry.	944	II
20.	Certificate to be issued to a witness.	945	II
21.	Certificate to be issued to Presenting Officer / Defence Assistant.	945	II
22.	Format of Inquiry Report of Inquiry Officer in departmental inquiry under Rule 20 (23) of A.P.C.S (CC&A) Rules, 1991.	946	II
23.	Summons to witness under Section 5(3) of A.P. Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1993.	948	II
24.	Transmission of summons to be served on a witness under Section 5(3) of A. P. Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1993.	949	II
25.	Authorisation to Inquiring Authority to exercise powers under Section 5 of A.P. Departmental Inquiries (Enforcement of Attendance of Witne-	950	II

	sses and Production of Documents) Act, 1993.		
26.	Authorisation to an authority not lower than appointing authority to exercise power under Section 4 of A.P. Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1993.	951	II
27.	Check List on referring cases to Commissioner for Departmental Inquiries for inquiry.	952	II
28.	Order imposing penalty on Government Servant on ground of conduct which led to conviction on a criminal charge.	953	II
29.	Order for holding departmental inquiry and placing under suspension, on Court deciding appeal in favour of Government Servant.	954	II
30.	Order setting aside penalty, on Court deciding appeal in favour of Government Servant.	956	II
31.	Sanction of Government for taking departmental action against a pensioner under Rule 9 of A.P. Revised Pension Rules, 1980.	957	II
32.	Memorandum of Articles of charge etc.to be communicated to pensioner in departmental action under Rule 9 of A.P. Revised Pension Rules, 1980.	958	II

33.	Check List & Annexure on submission of disciplinary cases to A.P. Public Service Commission.	960	II
34.	Check List on institution of Disciplinary Proceedings, processing Inquiry Report and awarding penalty.	964	II
35.	Comprehensive Check List on Service Particulars and stages of Disciplinary Proceedings.	968	II
36.	Affidavit in respect of claim of privilege under Section 123 Indian Evidence Act.	979	II
37.	Affidavit in respect of claim of privilege under Section 124 Indian Evidence Act.	980	II
38.	Particulars to be furnished by Government Servant while giving prior intimation or seeking prior sanction, under Rule 9(1), third proviso of A.P.C.S. (Conduct) Rules, 1964.	981	II
39.	Intimation of foreign currency / goods received by Government Servant Sri…… under Rule 6A of the A.P.C.S. (Conduct) Rules, 1964.	983	II
40.	Statement of immovable property possessed, acquired and disposed of by Government Servant Sri……. or any other person on his behalf or by any member of his family during year ending, under Rule 9(7) of A.P.C.S. (Conduct) Rules, 1964	984	II
41.	Statement of movable property possessed, acquired and disposed of by Government Servant Sri …….	985	II

	or any other person on his behalf or by any member of his family during year ending…….. under Rule 9(7) of A.P.C.S. (Conduct) Rules, 1964.		
42.	Acknowledgment of intimation of transactions of sale or purchase under Rule 9 (1) / (2) of A.P.C.S. (Conduct) Rules, 1964.	986	II
43.	Acknowledgment of property statements under Rule 9 of A.P.C.S. (Conduct) Rules, 1964.	987	II
44.	Monthly report of particulars of transfers, for review with reference to guidelines.	987	II
45.	Standard Notice Board inviting complaints of corruption.	988	II
46.	Quarterly statement of pending complaints on corruption forwarded by Vigilance Commission for report.	988	II
47.	Quarterly statement of pending news paper clippings on corruption forwarded by Vigilance Commission for report.	989	II
48.	Statement of cases of suspension pending or in contemplation of Inquiry / Investigation / Trial.	989	II
49.	Quarterly statement of cases of advice for transfer pending inquiry / investigation.	989	II

50.	Quarterly statement of list of officers against whom disciplinary inquiry was advised by Vigilance Commission.	990	II
51.	Quarterly statement of pending departmental inquiries with Inquiry Authorities.	990	II
52.	Quarterly statement of disposal of inquiry reports received in the Department.	991	II
53.	Details of penalty awarded in disciplinary cases during the quarter.	991	II
54.	Quarterly statement of cases of sanction for prosecution advised.	992	II
55.	Quarterly statement of departmental penalty proceedings in pursuance of conviction by a court of law.	992	II
56.	Quarterly statement of cases of deviation from the advice of Vigilance Commission.	993	II
57.	Form No.I – "Declaration" prescribed under the A.P. Special Courts Rules, 2017.	994	II
58.	Form No.II – "Notice of Confiscation" prescribed under the A.P. Special Courts Rules, 2017.	994	II
59.	Form No.III – "Registration of Confiscation Cases" prescribed under the A.P. Special Courts Rules, 2017.	995	II

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