Chapter 1

FACETS OF VIGILANCE

The word ‘vigilance’ is derived from the word ‘vigil’ which historically means keeping a night watch over the arrangements for ceremonies and high feasts, so that no one disturbs the arrangements or stole away the articles of food under the cover of darkness. Vigilance is different from supervision, which means personal direct guidance and control of the assigned roles of the Govt. servants placed for the time being under the command of a supervisory officer. Vigilance, on the other hand, denotes that the roles assigned to the supervisory officers and their subordinates are discharged incomplete full-fulfillment of the ground rules of good conduct laid down for the Govt. servants in their Conduct Rules. The concept of vigilance in today’s context does not only mean being watchful. It includes the following facets:-

I. Preventive Vigilance

II. Detective Vigilance

III. Punitive Vigilance

IV. Post-punitive Vigilance for corrective action.

I. PREVENTIVE VIGILANCE

It is a well known adage that prevention is better than cure. Preventive vigilance includes those steps which are instrumental in reducing or eliminating corruption from public services. Corruption denotes motivated exercise of authority and influence attached to a public office or to the dominant position one occupies in public service. This complex phenomenon which is now a deep seated malaise in society, cannot be eradicated so long as there is someone willing to corrupt and capable of corrupting and someone willing to be corrupted. There are many causes of corruption, such as, social, historical, procedural, etc. We are primarily concerned with those causes which fall within the purview of Public Administration. Some of these causes along with the remedial measures are indicated below:-

(i) Delays and bottlenecks due to complexity of procedures and multiplicity of authorities:-

Complexity of procedures result in delays which in turn results in payment of ‘speed money’. Remedial measures include simplification of procedures, publicity, time schedule for activities and demarcation of authority.

(ii) Identification of sensitive areas and posts:-

It always stand in good stead to identify sensitive areas and posts in an organisation. These areas can be where there is frequent public contact; which
generates more public complaints where licences, etc., are issued or where monetary transactions take place. In order to reduce corruption in these areas, it is necessary to fix a tenure of officials manning such areas or posts. A period of 3 years is considered adequate for the purpose. It is worthwhile to keep a special watch on sensitive areas by way of surprise checks.

(iii) Identification of officials suspected of corruption:-

An exercise to identify officials who are known for bad reputation or are suspected of corruption as a result of public complaints against them goes a long way in reducing corruption. Agreed lists are prepared in consultation with the Central Bureau of Investigation. Special watch is then kept on their work and way of life. Periodical reviews of such lists are undertaken. A study of property returns of such officials also yield useful results in nabbing them.

(iv) Use of discretion:-

The laws and rules regulating the life of the community, invariably involve exercise of discretion and those who are in a position of authority often either stumble through over-sight and error or exploit the opportunity to bestow favours and discharge of their duties. The remedy lies in minimising, as far as possible, the areas of discretion. It also helps if guidelines for exercise of discretion in various situations are issued to regulate the exercise of discretion by those in whom it is vested. It also helps to review cases of use of discretion with a view to finding out whether discretion has been used properly and in the best public interest.

(v) Institutional corruption:-

It has come to notice that in big Purchase Departments like DGS&D and Departments undertaking constructions such as CPWD have institutionalized corruption. The suppliers or the contractors pay money which is shared by all levels of employees in the Department. It is very difficult to introduce preventive measures in such kind of corruption, for the simple reason that the persons who are required to implement the preventive measures are the interested parties. The remedies are, therefore, required to be implemented rigorously and even slight deviations call for deterrent punishment. To counter such corruption, it would be useful to prescribe time schedule for various activities to introduce simple and standard forms; to hold concerned officials responsible for delays; and to demarcate clearly the area of responsibility of various levels of officials/officers.

II. DETECTIVE VIGILANCE

This area relates to the detection of corruption or misconduct on the part of Govt. servant. Complaints received from Govt. servants and members of public play an important part in detecting misconduct/corruption. Audit reports, Press reports, inspections, surprise checks are other useful means of locating misconduct/corruption. Speedy investigation holds the key for effective detective vigilance. The Chief Vigilance Officer of the organisation has to play a very constructive role in detection of misconduct/corruption.
III. PUNITIVE VIGILANCE

Wherever a misconduct or corruption has come to notice against a Govt. servant, it is necessary to penalise such a Govt. servant to set an example for others. Speedy conclusion of disciplinary proceedings goes a long way in having the desired effect. This area includes the implementation of the Discipline and Appeal Rules. The various steps involved are:-

1. Investigation and collection of evidence;
2. Issue of charge sheet;
3. Holding of inquiry wherever necessary;
4. Consideration of the inquiry report; and
5. Passing of the final order.

The area of Punitive Vigilance is very well defined and hence most of the Chief Vigilance Officers concentrate more on this area with the neglect of the areas of Preventive and Detective Vigilance.

IV. POST-PUNITIVE VIGILANCE FOR CORRECTIVE ACTION

This involves review of cases where penalties have already been imposed to find out whether there is any lacuna in the rules, orders or misconduct. This will go a long way in devising preventive steps for future.
DO OR DIE” is an old saying. “DO BEFORE YOU DIE” is the new one.
Chapter 2

INTERNAL AND PREVENTIVE VIGILANCE

Internal Vigilance - Vigilance activities mostly pertain to complaints received from sources outside departments. An efficient administration, however, should prefer to discover misconduct on its own. This internal vigilance depends on the efficiency of inspections.

Inspections are indeed meant to ensure that what was intended to be done, has been done correctly, honestly, economically, promptly and efficiently. Regrettably, inspections are considered a routine matter and, therefore, of less importance than more demonstrable activities. A consequence is that larger dependence has come to be placed on outside complaints for unearthing misconduct cases arising out of inspections/audit. Obviously, inspections are not as effective as they were intended to be.

Preventive Vigilance - Prevention is preferable to detection, investigation, inquiry and penal action. Normally, rules and procedures are made with a view that the public is served without fear or favour, justly, fairly and uniformly. A misconduct, therefore, would generally be reflected in violation or these rules and procedures, resulting in absence of entries, incorrect entries, fabrication of entries, etc. If the rules and procedures are, therefore, well-conceived then inspections in depth should not only bring out many of the corrupt acts to light, but also help to improve procedures and deter fresh attempts. It is necessary, therefore, that inspections are regularly planned and thoroughly carried out and their outcome is promptly processed. A continuous watch over the results of inspections cannot but fail to bring out lacunae in procedures.

If the purpose of vigilance is to reduce the occurrence of corruption/misconduct to the minimum, emphasis ought not to be given only on creation of machineries to investigate, inquire and punish the offender. What is important is continuous emphasis on good conduct. It should be a matter of concern whether or not Government activities take place correctly, honestly, economically, promptly and efficiently. It follows that things should get done and public should receive what they are entitled to without difficulty, without delay, without having to know somebody or without having to approach somebody. In practice, there is no compulsion on departments to be watchful over the continuous observance of good conduct. Together with continual inspection, constant check on the end result and administrative practice is essential. This matter deserves serious consideration.

It follows that every opportunity should be taken to improve and simplify rules and procedures whether such suggestion come out of inspections, investigations inquiries or reports. Any sensitive areas (where they can go on changing) where there are more opportunities of corruption would naturally receive adequate consideration.
IMPROVING VIGILANCE ADMINISTRATION

The Central Vigilance Commission Ordinance 1998 under Section 8 (1) (h) directs that the power and function of the CVC will be the following:

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

Improving vigilance administration is possible only if system improvements are made to prevent the possibilities of corruption and also encourage a culture of honesty. In exercise of the powers conferred on the CVC by Section 8 (1) (h), the following instructions have been issued for compliance:

CREATING A CULTURE OF HONESTY

Many organizations have a reputation for corruption. The junior employees and officers who join the organizations hopefully may not be so corruption minded as those who have already been part of the corrupt system. In order to ensure that a culture of honesty is encouraged and the junior officers do not have the excuse that because their seniors are corrupt, that they have to also adopt the corrupt practices, it is decided with immediate effect that junior employees who initiate any proposal relating to vigilance matters which is likely to result in a reference to the CVC can send a copy directly to the CVC by name. This copy will be kept in the office of the CVC and data fed into the computer. If within a reasonable time of say three to six months, the reference does not come to the CVC, the CVC then can verify with the concerned authorities in the department as to, what happened to the vigilance case initiated by the junior employee. If there is an attempt to protect the corrupt or dilute the charges, this will also become visible. Above all the junior officers will not have the excuse that they have to fall in line with the corrupt seniors. Incidentally, the seniors also cannot treat, the references made directly to the CVC as an act of indiscipline because the junior officers will be complying with the instructions issued under Section 8 (1) (h) of the CVC Ordinance 1998. However, if a junior officer makes a false or frivolous complaint it will be viewed adversely.

GREATER TRANSPARENCY IN ADMINISTRATION

One major source of corruption arises because of lack of transparency. There is a scope for patronage and corruption especially in matters relating to tenders; cases where exercise of discretion relating to out of conferment of facilities/privileges and so on. Each Organization may identify such items which provide scope for corruption and greater transparency would be useful. There is a necessity to maintain secrecy in such matters where discretion has to be exercised. But once the discretion has been exercised or as matters of tenders once the tender has been finalized there is no need for the secrecy. A practice, therefore, must be adopted with immediate effect by all organizations within the purview of the CVC that they will publish on the notice board and in the organization's regular publication the details of all such cases regarding tenders or out off turn allotments or discretion exercised in favour of an employee/party, The whole process of publication of this information will provide an
automatic check for corruption induced decisions or undue favours which go against principles of healthy vigilance administration.

The CVC will in course of time take up each organization and review to see whether any additions and alterations have to be made to the list of items which the organization identified in the first instance for the monitoring of communications for publicity in the interests of greater transparency. This may be implemented with immediate effect.

### SPEEDY DEPARTMENTAL INQUIRIES

One major source of corruption is that the guilty are not punished adequately and more important they are not punished promptly. This is because of the prolonged delays in the departmental inquiry procedures. The reasons for the departmental inquiry being delayed is that the officers along with has regular burden of work and this inquiry is to be done in addition to their work. The same is true for the Presenting Officers also.

Each organization, therefore, may immediately review all the pending cases and the Disciplinary Authority may appoint Inquiry Officers from among retired honest officer for conducting the inquiries. The names of these officers may be got ensured by the CVC. The CVC will also separately issue an advertisement and start building a panel of names all over India which can supplement the inquiry officer’s work in the department. In fact, it can be a healthy practice to have all the inquiries be done only through such retired employees because it can then be ensured that the departmental inquiries can be completed in time. If any service/departamental rules are in conflict with the above instructions they must be modified with immediate effect.

In order to ensure that the departmental inquiries are completed in time the following limits are prescribed:

In all cases which are presently pending for appointment of Inquiry Officers and Presenting Officer, such appointment should be made within the month. In all other cases, the Inquiry Officer and the Presenting Officer should be appointed wherever necessary, immediately after the receipt of the public servant's written statement of defence denying the charges.

The Oral inquiry, including the submission of the Inquiry Officer Report, should be completed within a period of 6 months from the date of appointment of the Inquiry Officer. In the preliminary inquiry in the beginning requiring the first appearance of the charged officers and the Presenting Officer, the Inquiry Officer should lay down a definite time bound programme for inspection of the listed documents, submission of the lists of defence documents and defence witnesses and inspection of defence documents before the regular hearing is taken up. The regular hearing, once started, should be conducted on day-to-day basis until completed and adjournment should not be granted on frivolous ground.
One of the causes for delay is repeated adjournments. Not more than two adjournment, would be given in any case so that the time limit of six months for departmental inquiry can be observed.

The IO/PO, DA and the CVO will be accountable for the strict compliance of the above instructions in every case.

**Tenders are generally a major source of corruption;**

In order to avoid corruption, a more transparent and effective system must be introduced. As post tender negotiations are the main source of corruption. Post tender negotiations are banned with immediate effect except in the case of negotiations with L1 (i.e. Lowest tenderer).

**PREVENTIVE VIGILANCE**

Corruption cannot be eliminated or even significantly reduced unless preventive measures to tackle the root causes of corruption are planned and implemented in a sustained and effective manner.

It is often quoted that *prevention is better than cure*. Corruption prone areas should be identified like drawal of false TA/DA, bogus reimbursement of LTC/medical claims. Surprise inspections should be intensified and follow up action taken. Presence of *vigilance* organisation should be felt. There should be effective vigilance.

Vigilance is an integral part of the administration. It prevents abuse of powers given by law and also ensures *correct application* of law. As the activity of Government expands, its *regulatory functions* also multiply manifold. Mere development is not enough. Its fruits should be shared by every citizen equitably. Conventional agencies like bureaucracy, judiciary are not enough. *Specialized agencies*, like Central Vigilance Commission are utmost essential to curb the menace of corruption. *Opportunities for* corruption, should be reduced to the barest minimum or brought down to a tolerable limit. It may not be possible to root out corruption at all levels completely. Corruption had always been there from time immemorial. *Committed individuals* are required to shoulder this responsibility.

Broadly speaking there are *three* aspects of vigilance -

(a) Punitive,
(b) Preventive and
(c) Detective.

**Punitive (curative)** is somewhat *'specialized'* in nature. It deals with actual vigilance cases a complaint received is investigated by investigating officer, oral inquiry is held and finally a *formal* penalty is imposed. Punitive vigilance is like conducting a *'post-mortem'* of the misconduct committed already by a Government servant. The case is analysed according to the seriousness of the misconduct committed.

*Preventive Vigilance'* is less specialized in nature and should be exercised at all the supervisory levels but unfortunately it had not received *adequate* attention. It consists of a particular aspect of vigilance. There are funny notions about corruption. *Dereliction* from duty may not always be deliberate and may not lead to any personal
gain. It might be due to lethargy. Intellectual dishonesty - things are done deliberately. There may be certain likes and dislikes i.e. prejudices and community feelings. Outright corruption is deliberate and for personal gains, i.e. cash, kinds and materials, if one- has not been in position, one should not have got it. One has been benefited because of One's position. Corruption has many shades, shapes, textures and dimensions.

It is said that 'Preventive Vigilance' is rather more effective than punitive and detective vigilance and it takes longer time. It is a fore warning that if corrupt practices are adopted, one will be dealt with severely and will have to face the consequences at the cost of his service career even. In order to achieve this goal, stern steps should be taken by personnel of sound integrity, strict policy, adequate training and planning. Corruption prone areas should be located, loopholes plugged and above all incentives should be given for the good work done. Some definite steps should be taken to curb corruption.

Corruption erodes the very vitals of the entire social system fabric. Organisations should have certain basic norms, duties and procedures. Bad laws should be changed by democratic ways and extreme measures may not be taken. It is said that nothing on earth could be achieved without curbing corruption. The biggest enemy of the country is corruption. Perhaps effective vigilance is a more difficult and a challenging task.

A little amount' of inefficiency or lethargy can be tolerated among the government servants but there can be no compromise with integrity. A strict watch is required on the dishonest and inefficient employees. Temptation for corruption is enormous among the salaried classes due to the combined effect of inflation and taxation. Corruption is an occasional act of dishonesty on the part of civil servants. The concept of integrity misuse of official position amongst public servants is that they should not use the official positions. Nepotism is also a misconduct. Public servants with inadequate strength of character tend to succumb to temptations by traders-who are willing and capable of corrupting public servants (by scope and temptation to misuse official position).

Corruption can be curbed by taking three ways - law, procedure and administration. Causes of corruption are very wide, i.e. external, internal and departmental. Personal factors are- the personality of the individual. The situation is not totally unsurmountable. Cultural, social and political steps have to be adopted. A strong moral personality of an individual does has its own effect. It comes from moral fibre. A personal factor can influence matters.

Internal and departmental factors leading to corruption are law, procedure and administration. Laws and rules pertaining to an organisation are essential. Bad laws have to be repealed/changed. If the law is too harsh, complicated and ambiguous, it leads to corruption. Bad laws should be changed. As regards procedure; it should not be such which leaves too much for discretion. Discretion will have to be commensurate with the level of the officers and the type of discretion enjoyed.

Dilatory tactics and/or complexity of the procedure like variety of forms and various authorities to be consulted are responsible for creeping in 'speed' money. For smoothening, the need for corruption arises. Administrative factors are structural and functional aspects, i.e. who is under whom and what is the method in which the entire organisation has been structured. It is said that even top heavy organisations are
prone to corruption. It should be structured in such a manner - to know as to what are the lacunas.

FUNCTIONAL METHOD:

It is one type process. 'On going' process is all the more important. Utterly neglected areas- work targets are assigned to clerks, quality orders are passed about the work done. Work should be quality oriented, which should be ensured. Quantity can be achieved by adequacy of the produce, i.e. quality and quantity. It is argued that a lenient view be taken for the first lapse/misconduct.

Supervisory authorities should maintain the C.Rs. in private sector, it is 'hire and fire' rule, but it is not so in government and public sector. These are the basic reasons for corruption - when good C.R. is given to a dishonest and corrupt person. It is a highly intellectual dishonesty. It is utmost necessary that C.Rs. are properly written. It shows mental lethargy. C.Rs. should be written objectively, and all good and bad attributes of the official should be brought and record. The mechanical writing of C.Rs. should be avoided.

Major lapses can be classified as mala-fides or administrative. The nature, frequency and magnitude of the lapse if repeated, then the bona-fides can be questioned.

Identification, investigation, inquiry and evidence are suitable penal measures. It is rather a big art to bring evidence on record about corruption. Perhaps vigilance machinery is thoroughly inadequate which should be strengthened suitably. The big question is as to how many honest and efficient officers we have? Honesty is the very root. Production at the cost of honesty and efficiency is a mere farce. The stronger the 'vigilance' the better the performance. People at all levels should be identified. In public dealings, reputation cannot be built up in a short period. It is an important aspect. It is an indicator to start with investigation. Technical inspection confirms the lapses.

It has been observed that in most of the Departments, property returns are not being examined. Income-tax Department started 'Operation Shudhi' and very interesting results came out of it. As regards movable assets (transaction limit above two months basic pay) intimation should be given indicating the movable articles, its price and the source, i.e., savings. loan, etc. Screening should be on regular basis, and it is not a very heavy exercise. It is desired that there should be a clinching evidence to haul up a person. Committed and competent men are required for preventive vigilance assignment. The idea is to identify talents in the promising young’s. Catch them young. These young recruits should be imparted specialized training required for holding sensitive posts which should be filled only on selective basis. It is desirable that supervisory authority should cross verify the records.

Officers of doubtful integrity should be kept away from sensitive posts and a constant watch should be kept on their activities. 'Agreed' lists should be updated with the assistance of CBI, periodically. ‘Suspected’ persons should be retired compulsorily by 'discharge simpliciter'. No person should be allowed to hold a sensitive post for more than a specified period. Service conditions should be reviewed constantly to ensure decent standard of living' for public servants, in keeping pace
with the general standard of living of his equals in the society. Vigilance should be associated in the process of recruitment, promotion, postings and transfers.

It is desired that there should be ‘speaking orders’ particularly when normal course of action is deviated. Rules and procedures should be simplified. Basic cause of corruption should be tackled rather than tightening with secondary matters. Rules of action are needed. As regards public relations, 'know your clientele'. Public Relation Officers (PROs) should contact persons having grievances and problems and should give feedback to the concerned officers. A close liaison with PROs is essential. But good relations should not degenerate into compromising one’s position. Be friendly and cooperative but also keep a distance.

It is desirable that senior officers should make incognito visits at odd hours. Security measures should be checked from time to time and suitably tightened. Chief Vigilance Officer should make his presence felt. It has its impact - though slow but certain.

'Justice delayed is justice denied'. Delays have demoralizing effect and the delays are major source of corruption. In old days people used to give bribe to get the wrong things done but today there is corruption even to get the right-things done in time. Definite time limits should be prescribed for dealing with files/receipts, etc. The level at which substantive decisions are to be taken should be prescribed. No indecent haste should be shown with a view to oblige a contactman. Close watch should be kept on officers who deal with private companies and businessmen.

Low wages combined with corruption lead to corruption. Government should delegate powers to dispense with the services of employees enjoying no good reputation/integrity without conducting any formal inquiry. Corruption is now almost kissing the upper levels, and is widespread among the lower and middle levels. Social climate has become highly materialistic and even corrupt do not suffer moral depravity. Effective measures are required to reduce the scope and necessity for corruption. Rules and procedures should be simplified. Areas of discretion and patronage should be reduced. Govt. which rules the least is the best. Over-regulation is also bad. A kind of administrative anarchy is prevalent. The beneficiaries should be contacted and their problems and grievances should be removed. Work done at the lower levels should be monitored. Outside interference and influence should be reduced which badly affects the internal systems.

An efficient administration can discover the misconduct on its own. Internal systems should be so organised and planned that the work is done efficiently, correctly, promptly, honestly and economically. Chief Vigilance Officer should not be only a passive agent but he should have initiative and drive. Public servants should not only be honest but they should appear to be honest at all times. They should enjoy good reputation also.

There are critical zones of corruption which provide more opportunities for corruption than other departments. In an atmosphere of scarcity, individuals bid for goods and services, and the deciding officer may twist his discretion in their favour.

Discretion is vested in officers deciding the issues, far in excess of their ability and capacity to resist their temptations. Influence is also pressed into service by pleasing
political bosses for earning promotions. It is rightly said that there would be no corrupt official unless there are men willing to corrupt them. There is need to introduce a system to prescribe qualifications for political appointments and conduct rules for legislators. Such reforms if introduced, would gradually promote the 'vigilance health' of the country. The necessity and scope for corruption - should be reduced effectively. Levels and areas of corruption should be exposed.

"People's faith" and confidence are getting down day by day. A kind of helplessness has crept in that the Government Departments are mere hindrances rather than a help. Corruption may lead to the 'Law of jungle'. It may lead to indiscipline in all fields of administration', thus making the life of the common man miserable. He may not know as from where he can expect justice. Corruption may ultimately assassinate the character and morality of the Indian Society. Thus containment of consumption is the basic need of the time. It has become almost the way of life. Sometimes artificial emergency is created to by-pass formalities so that works could be given to favoured contractors and commissions are taken by the purchase officers.

The bridges, dams, buildings like Taj Mahal, Red Fort and Qutab Minar, constructed centuries ago, stand even today without much damage though subjected to weathering certainly because of the quality of work. Whereas the structures constructed today start leaking/cracking even before the inauguration ceremony.

Priority should be given to preventive vigilance in order to deal with the causes of corruption, in various organisations, rather than merely treating the symptoms by way of catching and punishing some guilty individuals here and there. Chief Vigilance Officer's work should be reviewed periodically and support and guidance be provided to them. Preventive role is also played by the Chief Technical Examiners' (CTE) of the Central Vigilance Commission in respect of capital works under construction. Preventive vigilance should include improvement of procedures and practices, systems, surprise checks' and 'effective monitoring'. It is desirable that priority should be given to identify corruption prone areas and habitually corrupt officials. The reputed public servants should be dealt with speedily and effectively. There should be no hesitation to take recourse to premature retirement of persons of doubtful integrity. A system of regular inspections, covering all aspects of operations, including surprise inspections, should be introduced.

Public Sector Undertakings should have whole-time Inquiry Officers, for expeditious conduct of inquiries. In order to curb the misuse of LTC and medical reimbursement facilities, it would be desirable to debar the delinquent from the facility for a specified subsequent period.

It has been observed that tender notices do not receive adequate publicity. The Commission has suggested that government might consider bringing out a special tender journal on the lines of 'Rozgar'. Special criminal law for bank and insurance offences should be enacted. It will provide confiscation of ill-gotten wealth from the illegitimate possessor.
Chapter 3

CENTRAL VIGILANCE COMMISSION

Its set up, composition, functions, jurisdiction and consultation

One of the main functions of the state is maintenance of law and order, right of equality before law and to prevent abuse of power given by law and ensuring correct application of law. This can be ensured by watchfulness, caution and vigilance.

According to Senator Douglas corruption has vastly existed in one form or the other Corruption was life in British Public life barely 100 years ago and in USA till the beginning of this century. In primitive and medieval societies scope for corruption was bare minimum. Few authorities existed for collection of taxes, administration of justice but not according to any written laws. So long as they were loyal to the existing methods, they amassed wealth, and were praised rather than ensured. War, time controls, restrictions and scarcities provided ample opportunities for bribery, corruption and favoritism.

Vigilance means ‘watchfulness’ or to bring awareness. It is an integral part of all Government Institutions. More development will not be enough, its fruit should be shared equitably. Public servants with inadequate strength of character tend to succumb to temptations by traders who are willing and capable to corrupt public servants. Perhaps high water-mark was reached during the 2nd World War.

Corruption among the public servants has been there from time immemorial. It has always existed in one form or the other, although its shape, dimensions, textures and shades etc have been changing from time to time and place to place. According to Kautilya’s Arthashastra, there are forty (40) ways of embezzlement. What is realized earlier is entered later and what is realized later is entered earlier. What is payable is not paid and what is not payable is paid. What is taken in the treasury is removed. Kautilya further says that just as fish moving deep under water con not be possibly found out either as drinking or not drinking water, so Government servants employed in Government work may not be found out while taking money for themselves. If is possible to ascertain the movement of birds flying high up in the sky but it is not possible to ascertain the movement of Government servants of their hidden purposes. Kautilys in his Arthshastra further says that just as it is impossible not to taste the drop of honey or poison that is placed at the tip of the tongue, so it is rather impossible for the Govt. servant not to eat up at least a bit of king’s revenue. It is a world wide phenomenon, not confined to India alone. Corruption has progressively increased both horizontally and vertically. It may not be possible to root it out completely at all levels but certainly it is possible to roll it down or to contain it within tolerable limits. It may not be possible to attain ‘zero’ level corruption. There was a time when we had to bribe for the wrong thing down. Now the time has come when we have to bribe for getting right things done at the right time.

Government servant’s ill gotten money should not only be confiscated but they should also be transferred from one work to another so that they cannot either misappropriate Government money or vomit what they has eaten up. Corruption means that a civil servant abuses his authority in order to obtain an extra income from the
public. It is an occasional act of dishonesty on the part of the civil servants. Concept of integrity amongst public servants is that they should not abuse their official position. Nepotism is also a misconduct. Corruption is like a leaking tub which will never be full unless the leakage is effectively plugged. Corruption like cancer has eaten the very vitals of the human fabrics.

Broadly speaking there are four categories of Government / Public servants:-

1. Honest and Efficient;
2. Honest and Inefficient;
3. Dishonest and Efficient; and
4. Dishonest and Inefficient.

A strict watch and close supervision is required over the third category of ‘Dishonest and Efficient’ employees late Shri B. K. Acharya former CVC said in one of his speeches that very often It is the corrupt officer which is also very efficient. He further added that left to himself he would prefer to have an officer who is less efficient but whose integrity is above board.

There are intrinsic handicaps of domestic vigilance organizations – special fraternal sympathy, over protectiveness etc. there is need for an impartial and unbiased organization having broad uniformity of approach in the matter of detection, punishment and purging of Government servants and dealing with problems of corruption in general.

Anti-corruption measures of the Central Government are a responsibility of:

i. Administrative Vigilance Division [AVD] in the Department of Personnel & Training;
ii. Central Bureau of Investigation;
iii. Vigilance units in the Ministries/Departments of Government of India, Central Public Enterprises and other autonomous organisations [hereinafter referred to as Department];
iv. the disciplinary authorities; and
v. the Central Vigilance Commission [hereinafter referred to as the Commission].

The AVD is concerned with the rules and regulations regarding vigilance in public services. The SPE wing of the CBI investigates cases involving commission of offences under the Prevention of Corruption Act, 1988 [hereinafter referred to as PC Act] against the public servants and other misconducts allegedly committed by the public servants having vigilance overtones. The disciplinary authority has the over-all responsibility of looking into the misconducts alleged against, or committed by, the public servants within its control and to take appropriate punitive action. It is also required to take appropriate preventive measures so as to prevent commission of misconducts/malpractices by the employees under its control and jurisdiction. The Chief Vigilance Officer [CVO] acts as a Special Assistant/Advisor to the Head of the concerned Department in the discharge of these functions. He also acts as a liaison officer between the Department and the CVC as also between the Department and the CBI. The Central Vigilance Commission acts as the apex organisation for exercising
general superintendence and control over vigilance matters in administration and probity in public life.

The Administrative Vigilance Division was set up in the Ministry of Home Affairs, in August 1955, to serve as a central agency to assume overall responsibility for anti-corruption measures. With the establishment of the Central Vigilance Commission, a good part of the functions performed by the Administrative Vigilance Division are now exercised by the Central Vigilance Commission. The Administrative Vigilance Division is now responsible for the formulation and implementation of policies of the Central Government in the field of vigilance, integrity in public services, and anti-corruption and to provide guidance and coordination to Ministries/Department of Government of India in matters requiring decisions of Government.

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

**Set-up:** In terms of the provisions made in the CVC’s Act, the Commission shall consist of a Central Vigilance Commissioner [Chairperson] and not more than two Vigilance Commissioners [Members]. Presently, the Commission is a three member Commission consisting of a Central Vigilance Commissioner and two Vigilance Commissioners. The Central Vigilance Commissioner and the Vigilance Commissioners are appointed by the President by warrant under his hand and seal for a term of four years from the date on which they enter upon their offices or till they attain the age of sixty-five years, whichever is earlier.

**Functions and Powers of Central Vigilance Commission:**

The functions and powers of the Commission, as defined in the CVC Act, are as under:
(a) To exercise superintendence over the functioning of Delhi Special Police Establishment [DSPE] insofar as it relates to investigation of offences alleged to have been committed under the PC Act or an offence with which a public servant belonging to a particular category [i.e. a member of All India Services serving in connection with the affairs of the Union; or Group ‘A’ officer of the Central Government; or an officer of the Central Public Sector enterprise/autonomous organisation etc.] may be charged under the Code of Criminal Procedure at the same trial;
(b) To give directions to the DSPE for the purpose of discharging the responsibility of superintendence. The Commission, however, shall not exercise powers in such a manner so as to require the DSPE to investigate or dispose of any case in a particular manner;
(c) To inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central Government or a corporation established by or under any Central Act,
Government company, society and any local authority owned or controlled by that Government, has committed an offence under the PC Act; or an offence with which a public servant may, under the Code of Criminal Procedure, 1973, be charged at the same trial;  
(d) To inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to the following categories of officials, wherein it is alleged that he has committed an offence under the PC Act:  
(i) Members of All India Services serving in connection with the affairs of the Union;  
(ii) Group 'A' Officers of the Central Government;  
(iii) Officers of Scale-V and above of public sector banks;  
(iv) Such level of officers of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf, provided that till such time a notification is issued, all officers of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred to in this clause.  
(e) To review the progress of applications pending with the competent authorities for sanction of prosecution under the PC Act;  
(f) To review the progress of investigations conducted by the DSPE into offences alleged to have been committed under the PC Act;  
(g) To tender advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, the said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise; and  
(h) To exercise superintendence over the vigilance administration of various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.  

Clause 24 of the CVC Act empowers the Commission to discharge the functions entrusted to it vide Government of India’s Resolution dated 11.02.1964, insofar as those functions are not inconsistent with the provisions of the Act. Thus, the Commission will continue to perform following functions in addition to the functions enumerated in para above:  

(a) **Appointment of CVOs:** The Commission would convey approval for appointment of CVOs in terms of para 6 of the Resolution, which laid down that the Chief Vigilance Officers will be appointed in consultation with the Commission and no person whose appointment as the CVO is objected to by the Commission will be so appointed.  
(b) **Writing ACRs of CVOs:** The Central Vigilance Commissioner would continue to assess the work of the CVO, which would be recorded in the character rolls of the officer concerned in terms of para 7 of the Resolution.  
(c) **Commission’s advice in Prosecution cases:** In cases in which the CBI considers that a prosecution should be launched and the sanction for such prosecution is required under any law to be issued in the name of the President, the Commission will tender advice, after considering the comments received from the concerned Ministry/Department/Undertaking, as to whether or not prosecution should be sanctioned.
(d) **Resolving difference of opinion between the CBI and the administrative authorities:** In cases where an authority other than the President is competent to sanction prosecution and the authority does not propose to accord the sanction sought for by the CBI, the case will be reported to the Commission and the authority will take further action after considering the Commission’s advice. In cases recommended by the CBI for departmental action against such employees as do not come within the normal advisory jurisdiction of the Commission, the Commission will continue to resolve the difference of opinion, if any, between the CBI and the competent administrative authorities as to the course of action to be taken.

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

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

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

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

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

**Jurisdiction:** Clause 8(1)(g) of the CVC Act requires the Commission to tender advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise. Thus, the types of cases to be referred to the Commission for advice, and also the status of officers against whom the cases would be referred to the Commission, may require a notification by the Government in the rules to be framed under the Act or through administrative instructions on the recommendation made by the Commission. However, till such time the instructions are notified, the Commission would continue to advise on **vigilance cases** against following categories of employees:

(a) Group ‘A’ officers of the Central Government;
(b) Members of All India Services if misconduct was committed while serving in connection with the Affairs of the Union; or if the State Govt. proposes to impose a penalty of dismissal, removal or compulsory retirement for the misconduct committed by him while serving in connection with the affairs of that State Government;
(c) Executives holding top positions up to two levels below the Board-level in the public sector undertakings;
(d) Officers in Scale-V and above in the public sector banks;
(e) Officers of the rank of Assistant Manager and above in the insurance sector (covered by LIC and GIC); and
(f) Officers drawing basic pay of Rs.8700 and above in autonomous bodies/local authorities/societies etc.

While delegating powers to the Ministries/Organisations to handle vigilance cases against certain categories of employees, the Commission expects that (i) appropriate expertise would be available to the CVOs; (ii) the CVO would be in a position to exercise proper check and supervision over such cases and would ensure that the cases are disposed off expeditiously; and (iii) the punishment awarded to the concerned employee would commensurate with the gravity of the misconduct established on his/her part. In order to ensure that the Commission expectations are fully met, the Commission may depute its officers to conduct vigilance audit through onsite visits and also through the monthly information system (monthly reports) etc. If the Commission comes across any matter, which in its opinion has not been handled properly, it may recommended its review by the reviewing authority or may give such directions as it considers appropriate.

PUNITIVE FUNCTIONS

The Commission has the powers to:

i) undertake or have an inquiry made into any transaction in which a public servant is involved;

ii) cause an inquiry or investigation made into any complaint of corruption, lack of integrity on the part of a public servant;

iii) ask the Central Bureau of Investigation to register a regular case and investigate;

iv) entrust the complaint, information or case of inquiry to the Ministry/Department for investigation.

CONSULTATION WITH THE COMMISSION

The Commission tenders advice at two stages. The first stage advice will indicate the nature of action to be taken against the Government servant, whose conduct has been investigated. The Commission advises whether minor or major penalty proceedings should be initiated. At the second advice, the Commission considers the report of the Inquiry Officer and advises the disciplinary authority about the penalty to be imposed. All references to the Commission must be made at the level of the Chief Vigilance Officer or Deputy Secretary/Director in the Department. Where the Department differs with the advice of the Commission and desire reconsideration by the Commission, cases should be referred to the Commission with the approval of the Secretary of the Department. The Commission advises in all matters having a vigilance angle in which public servants of the Central Govt. or the Administration of a Union Territory or an employee of a Public Undertaking or a Nationalised Bank is involved. The cases having vigilance angle are broadly as follows:

i) Cases of corruption, cheating, bribery, misappropriation fraud and lack of integrity:
ii) Cases of abuse of official power/authority for self gain or for anyone else;
 iii) Cases in which a Govt. servant has caused substantial loss to Govt. as a result of grave/deliberate negligence or indulged in nepolism;
 iv) Cases of disproportionate assets.

Disciplinary proceedings resulting from purely administrative lapses are not referred to the Commission. Department investigation reports are sent to the Commission for their advice where the Commission had asked for investigation as well as where a Gazetted Govt. servant is involved. The report of the CBI is sent to the Department concerned with a copy to the Commission. The Department is required to submit its comments to the Commission within one month.

**CTE organisation:**

The Committee on Prevention of Corruption had recommended that the Chief Technical Examiner’s Organisation [hereinafter referred as CTEO], which was created in 1957, in the Ministry of Works, Housing & Supply for the purpose of conducting a concurrent technical audit of works of the Central Public Works Department with a view to securing economy in expenditure and better technical and financial control, should be transferred to the Central Vigilance Commission so that its services may be easily available to the Central Bureau of Investigation or in inquiries made under the direction of the Central Vigilance Commission. The recommendation was accepted by the Government of India and the Chief Technical Examiner’s Organisation now functions under the administrative control of the Central Vigilance Commission as its technical wing, carrying out inspection of civil, electrical and horticulture works of the Central Government departments, public sector undertakings/enterprises of the Government of India and central financial institutions/banks etc. The jurisdiction of the organisation is coextensive with that of the Commission. The works or contracts for intensive examination are selected from the details furnished by the CVO in the quarterly progress reports sent to the CTEO. The intensive examination of works carried out by the organisations helps in detecting cases related to execution of work with substandard materials, avoidable and/or ostentatious expenditure, and undue favours or overpayment to contractors etc. At present, information in respect of civil works in progress having the tender value exceeding Rupees One crore, electrical/mechanical/electronic works exceeding Rupee fifteen lacs, horticulture works more than Rupee two lacs and store purchase contracts valuing more than Rupee two crores are required to be sent by the CVOs of all organisations. However, the Chief Vigilance Officers are free to recommend other cases also, while submitting the returns for examination of a particular work, if they suspect any serious irregularities having been committed.

Out of the returns furnished by the Chief Vigilance Officer, the Chief Technical Examiners select certain works for intensive examination and intimate these to the CVOs concerned. The CVO is expected to make available all relevant documents and such other records as may be necessary, to the CTE’s team examining the works. After intensive examination of a work is carried out by the CTE’s Organisation, an inspection report is sent to the CVO. The CVO should obtain comments of various officers at the site of work or in the office at the appropriate level, and furnish these comments to the CTE with his own comments. In case the CTE recommends investigation of any matter from a vigilance angle, such a communication should be treated as a complaint and dealt with appropriately. The investigation report in such
cases should be referred to the Commission for advice even if no vigilance angle emerges on investigation.

**CDIs Unit:** To assist the disciplinary authorities in the expeditious disposal of oral inquiries, the Ministry of Home Affairs appointed Officers on Special Duty [later redesignated as Commissioners for Departmental Inquiries] on the strength of the Administrative Vigilance Division. On the recommendation of the Committee on Prevention of Corruption, the Commissioners for Departmental Inquiries were transferred to work under the control of the Central Vigilance Commission.

**Annual Report:** The Commission is required to present annual report to the President as to the work done by it within six months of the close of the year under report. The report would contain a separate part on the superintendence by the Commission on the functioning of Delhi Special Police Establishment. The President shall cause the same to be laid before each House of Parliament.
Chapter 4

Central Bureau of Investigation

ITS SET UP AND ROLE IN DISCIPLINARY CASES.

Corruption is a deep rooted malice in the society which cannot be effectively eradicated so long as there is someone willing to corrupt and capable of corrupting. It is a widespread phenomenon. During 2nd World War, huge expenditure on War supplies, controls and shortages created opportunities at all levels to acquire wealth by ill-gotten means. To meet the menace of corruption a special investigation agency called the Special Police Establishment was created in 1941 under the War Department of British India. The Delhi Special Police Establishment Act was passed in 1946. Later on, in 1963 the Central Bureau of Investigation (CBI) was created and the Delhi Special Police Establishment became one of its wings. The CBI draws its powers from the ibid Act.

PURPOSE-

The basic purpose for which CBI has been created is to investigate the cases of corruption and corrupt practices among the public servants, though the Union Govt. can vest them with powers to investigate cases relating to other offences also. The SPE division of the CBI deals with cases relating to corruption is normally concerned with the employees of Union Govt. and its Public Undertakings. The CBI have branches throughout India and members of public can contact them to make complaints of corruption, bribery against public servants.

CASES WHICH ARE INVESTIGATED BY CBI

- Bribery
- Corruption
- Embezzlement

The officers of SPE have all the powers, duties, privileges which police officers of that area have for investigation and any officer of above the rank of Sub-Inspector.

SET UP OF CBI

The Central Bureau of Investigation was constituted under the Government of India Resolution No. 4/31/61-T dated 01.04.1963. The investigation work is done through SPE wing of the CBI, which derives it police powers from the Delhi Special Police Establishment Act, 1946 to inquire and to investigate certain specified offences or classes of offences pertaining to corruption and other kinds of malpractices involving public servants with a view to bring them to book. Section 3 of the Act provides that Central Government may, by notification in the official gazette, specify the offences or class of offences, which are to be investigated by the CBI.

BRANCHES OF CBI

Each Branch/Unit is under the charge of Supdt. Of Police and are located throughout the length and breadth of the country. Regional DIGs are located in
different states. General Offence Wing and Economic Offence Wings are located at Delhi. General Offence Wing has 21 branches of CBI. These are grouped under zones. Central branches located at Delhi have all India Jurisdiction.

Economic Offence Wing was created in 1964. It deals with economic offences i.e. offences under Customs, Income Tax, Narcotic Drugs, Company Laws and Gold Control Rules.

The Special Police Establishment enjoys with the respective State Police Force concurrent powers of investigation and prosecution under the Criminal Procedure Code. However, to avoid duplication of effort, an administrative arrangement has been arrived at with the State Governments according to which:
(a) Cases, which substantially and essentially concern Central Government employees or the affairs of the Central Government, even though involving State Government employees, are to be investigated by the SPE. The State Police is, however, kept informed of such cases and will render necessary assistance to the SPE during investigation;
(b) Cases, which substantially and essentially involve State Government employees or relate to the affairs of a State Government, even though involving certain Central Government employees, are investigated by the State Police. The SPE is informed of such cases and it extends assistance to the State Police during investigation, if necessary. When the investigation made by the State Police authorities in such cases involves a Central Government employee, the requests for sanction for prosecution of the competent authority of the Central Government will be routed through the SPE.

The Special Police Establishment, which forms a Division of the Central Bureau of Investigation, has two Divisions, viz. (i) Anticorruption Division and (ii) Special Crimes Division. Anticorruption Division investigates all cases registered under the Prevention of Corruption Act, 1988. If an offence under any other section of IPC or any other law is committed along with offences of bribery and corruption, it will also be investigated by the Anticorruption Division. The Anti-corruption Division will also investigate cases pertaining to serious irregularities allegedly committed by public servants. It will also investigate cases against public servants belonging to State Governments, if entrusted to the CBI. On the other hand, the Special Crime Division investigates all cases of Economic offences and all cases of conventional crimes; such as offences relating to internal security, espionage, sabotage, narcotics and psychotropic substances, antiquities, murders, dacoities/robberies, cheating, criminal breach of trust, forgeries, dowry deaths, suspicious deaths and other offences under IPC and other laws notified under Section 3 of the DSPE Act.

The superintendence of the Delhi Special Police Establishment insofar as it relates to investigation of offence alleged to have been committed under the Prevention of Corruption Act, 1988 [i.e. Anti-Corruption Division] vests in the Commission. The superintendence of DSPE in all other matters vests in the Central Government.

The administration of DSPE vests in the Director of the CBI, who is appointed on the recommendations of a committee headed by the Central Vigilance Commissioner. He holds office for a period of not less than two years from the date on which he resumed office. The Director CBI shall exercise in respect of DSPE such of the powers exercisable by an Inspector General of Police in respect of police force in a
State as the Central Government may specify in that behalf. The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 except with the previous approval of the Central Government where such allegation relates to-
(a) the employees of the Central Government of the level of Joint Secretary and above:
(b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

Notwithstanding anything contained in para above, no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration referred to in clause (c) of the Explanation to section 7 of the Prevention of Corruption Act, 1988.

PROCEDURE FOR REFERENCE TO CBI

As a general principle, the cases involving allegation of corruption, bribery, embezzlement and falsification of accounts etc. are to be referred to them for investigation. Once a case is referred to CBI, there should be no parallel inquiry by the department. The CBI should be extended full cooperation by the Govt. Deptts. They must be allowed full access to official records for making discreet preliminary inquiries and should also assist the CBI in understanding the technical aspects of the problem and culture within the organization.

TYPES OF CASES REFERRED TO CBI:

(a) Where non-official witnesses are to be examined.
(b) Where non-official records are to be seized
(c) Complicated cases where expert police investigation is necessary

Prompt reference should be made to CBI to eliminate the possibility of the suspect officer tampering with or destroying the incriminating evidence against him.

When CBI recommends Departmental Action:

When the available evidence is considered insufficient for a criminal prosecution and the offences are less serious, CBI may recommend RDA (Regular Departmental Action) for major penalty. Further action will be taken by issuing a charge sheet and the case is processed as per procedure laid down in CCS (CCS) Rules, 1965. in cases investigated by the CBI, the Presenting Officer is invariably nominated by CBI. The investigating officer may not be appointed as P. O.

But where CBI has recommended departmental action and there is a difference of opinion with the departmental authority that action by the administrative authority is inadequate, the CBI can refer the case to Central Vigilance Commission and its advice in the case shall be final.

CBI takes up cases for investigation on the basis of information collected by its own sources, or information received from the members of the public as well as cases referred by CVC or various Ministries/Departments. It discretely verifies if the
information disclosed prima facie commission of a cognizable offence, then a RC (Regular Case) is registered, but if the information disclosed only commission of procedural irregularities which requires further verification then a PE (Preliminary Enquiry) is registered. If the PE disclosed commission of cognizable offence, the PE converted into RC for further investigation.

A copy of FIR (RC/PE) is sent to the concerned department. CBI requests the department for supply of original documents but if the day to day work is adversely effected by seizure of original documents, a certificate shall be given that the originals shall be kept in safe custody, out of reach of suspected officer.

PROSECUTION

Prosecution should be a general rule in the cases of bribery, corruption or other criminal misconducts and also in cases fit to be sent to the Court of Law for Prosecution in a court. Once a case has been placed before a court, it will take its normal course. A proposal to withdraw prosecution can be initiated by CBI on legal grounds and Min. of Law should be consulted in such cases.
Chapter 5

CHIEF VIGILANCE OFFICERS

Primary responsibility for maintenance of purity, integrity and efficiency in the organisation vests in the Secretary of the Ministry, or the head of the Department, or the Chief Executive of the Public Sector Enterprises. Such authority, however, is assisted by an officer called the Chief Vigilance Officer (CVO) in the discharge of vigilance functions. The CVO acts as a special assistant/advisor to the chief executive and reports directly to him in all matters relating to vigilance. He heads the Vigilance Division of the organisation concerned and provides a link between is organisation and the Central Vigilance Commissioner and his organisation and the Central Bureau of Investigation.

It has been provided that big departments/organisations should have a full-time CVO, i.e. he should not be burdened with other responsibility. If it is considered that the CVO does not have full-time vigilance work, he may be entrusted with such functions that serve as input to vigilance activity, e.g. audit and inspections. The work relating to security and vigilance, however, should not be entrusted to the CVO as, in that case, the CVO would find very little time for effective performance of vigilance functions. Furthermore, in order to be effective, he should normally be an outsider appointed for a fixed tenure on deputation terms and should not be allowed to get absorbed in the organisation either during the currency of deputation period or on its expiry.

The Chief Vigilance Officers in all departments/organisations are appointed after prior consultation with the Central Vigilance Commission and no person whose appointment in that capacity is objected to by the Commission may be so appointed.

The Ministries/Departments of Government of India are required to furnish a panel of names of officers of sufficiently higher level (Joint Secretary or at least a Director/Dy. Secretary), who may report direct to the Secretary concerned, in the order of preference, along with their bio-data and complete ACR dossiers for the Commission’s consideration. The officer approved by the Commission for the post of CVO is entrusted vigilance functions on full-time or part-time basis, as the case may be.

The CVO in a public sector undertaking (PSU), as far as practicable, should not belong to the organisation to which he is appointed, and having worked as CVO in an organisation, should not go back to the same organisation as CVO. The thrust behind this policy is to ensure that the officer appointed as CVO is able to inspire confidence that he would not be hampered by past association with the organisation in deciding vigilance cases.

Suitable arrangements in vacancies for three months, or for any shorter period, due to leave or other reasons, may be made by the appropriate authority concerned, without prior approval of the Central Vigilance Commission. The nature and duration of vacancy and the name of the officer, who is entrusted with the duties of CVO, should however be reported to the Commission.
It is considered that participation in decision making or close association of vigilance staff in such matters over which they might be required, at a later stage, to sit in judgment from vigilance point of view, should be avoided. Therefore, vigilance functionaries should not be a party to processing and decision-making processes or in other similar administrative transactions of such nature, which are likely to have clear vigilance sensitivity. While it may not be difficult for full-time vigilance functionaries to comply with this requirement, the compliance of these instructions could be achieved in respect of part-time vigilance functionaries by confining their duties, other than those connected with vigilance work, as far as possible, to such items of work that are either free from vigilance angle or preferable serve as input to vigilance activities such as inspection, audit, etc.

Central Vigilance Commissioner has also been given the powers to assess the work of Chief Vigilance officers. The Assessment is recorded in the character rolls of the officer. For that purpose, the following procedure has been prescribed:

(i) The ACRs of the CVOs in the public sector undertakings/organisations, whether working on a full-time or a part-time basis, would be initiated by the chief executive of the concerned undertaking/organisation, reviewed by the Secretary of the administrative Ministry/Department concerned, and sent to the Central Vigilance Commissioner for writing his remarks as the accepting authority;

(ii) The assessment by the Central Vigilance Commissioner in respect of the CVOs in the Ministries/Departments of the Government of India and their attached/subordinate offices, who look after vigilance functions in addition to their normal duties, will be recorded on a separate sheet of paper to be subsequently added to the confidential rolls of the officers concerned.

As stated above, the CVO heads the vigilance Division of the organisation concerned and acts as a special assistant/advisor to the chief executive in all matters pertaining to vigilance. He also provides a link between his organisation and the Central Vigilance Commission and his organisation and the Central Bureau of Investigation. Vigilance functions to be performed by the CVO are of wide sweep and include collecting intelligence about the corrupt practices committed, or likely to be committed by the employees of his organisation; investigating or causing an investigation to be made into verifiable allegations reported to him; processing investigation reports for further consideration of the disciplinary authority concerned; referring the matters to the Commission for advice wherever necessary, taking steps to prevent commission of improper practices/misconducts, etc. Thus, the CVOs’ functions can broadly be divided into three parts, as under:

(i) Preventive vigilance
(ii) Punitive vigilance
(iii) Surveillance and detection.

While “surveillance” and “punitive action” for commission of misconduct and other malpractices is certainly important, the preventive measure” to be taken by the CVO are comparatively more important as these are likely to reduce the number of vigilance cases considerably. Thus, the role of CVO should be predominantly preventive.
Preventive vigilance

Santhanam Committee, while outlining the preventive measures, that should be taken to significantly reduce corruption, had identified four major causes of corruption, viz. (i) administrative delays; (ii) Government taking upon themselves more than what they can manage by way of regulatory functions; (iii) scope for personal discretion in the exercise of powers vested in different categories of government servants; and (iv) cumbersome procedures of dealing worth various matters which are of importance to citizens in their day to day affairs. The CVO is thus expected to take following measures on preventive vigilance side:

(i) To undertake a study of existing procedure and practices prevailing in his organisation with a view to modifying those procedures or practices which provide a scope for corruption, and also to find out the causes of delay, the points at which delay occurs and device suitable steps to minimize delays at different stages;
(ii) To undertake a review of the regulatory functions with a view to see whether all of them are strictly necessary and whether the manner of discharge of those functions and exercise of powers of control are capable of improvement;
(iii) To device adequate methods of control over exercise of discretion so as to ensure that discretionary powers are not exercised arbitrarily but in a transparent and fair manner;
(iv) To educate the citizens about the procedures of dealing with various matters and also to simplify the cumbersome procedures as far as possible;
(v) To identify the areas in his organisation which are prone to corruption and to ensure that the officers of proven integrity only are posted in those areas;
(vi) To prepare a list of officers of doubtful integrity - The list would include names of those officers who, after inquiry or during the course of inquiry, have been found to be lacking in integrity, such as (a) officer convicted in a Court of Law on the charge of lack of integrity or for an offence involving Moral turpitude but who has not been imposed a penalty of dismissal, removal or compulsory retirement in view of exceptional circumstances; (b) awarded departmentally a major penalty on charges of lack of integrity or gross dereliction of duty in protecting the interest of government although corrupt motive may not be capable of proof; (c) against whom proceedings for a major penalty or a court trial is in progress for alleged acts involving lack of integrity or moral turpitude; and (d) who was prosecuted but acquitted on technical grounds as there remained a reasonable suspicion about his integrity;
(vii) To prepare the “agreed list” in consultation with the CBI- This list will include the names of officers against whose honesty or integrity there are complaints, doubts or suspicions;
(viii) To ensure that the officers appearing on the list of officers of doubtful integrity and the agreed list are not posted in the identified sensitive/corruption prone areas;
(ix) To ensure periodical rotations of staff; and
(x) To ensure that the organisation has prepared manuals on important subjects such as purchases, contracts, etc. and that these manuals are updated from time to time and conform to the guidelines issued by the Commission.

Punitive vigilance

The CVO is expected to scrutinize reports of Parliamentary Committees such as Estimates Committee, Public Accounts Committee and the Committee on public
undertakings; audit reports; proceedings of both Houses of Parliament; and complaints and allegations appearing in the press; and to take appropriate action thereon. Predominantly, the CVO is expected to take following action on the punitive vigilance aspects:
(i) To receive complaints from all sources and scrutinize them with a view to finding out if the allegations involve a vigilance angel. When in doubt, the CVO may refer the matter to his administrative head;
(ii) To investigate or cause an investigation to be made into such specific and verifiable allegations as involved in a vigilance angle;
(iii) To investigate or cause an investigation to be made into the allegations forwarded to him by the Commission or by the CBI;
(iv) To process the investigation reports expeditiously for obtaining orders of the competent authorities about further course of action to be taken and also obtaining Commission’s advice on the investigation reports where necessary;
(v) To ensure that the charge sheets to the concerned employees are drafted properly and issued expeditiously;
(vi) To ensure that there is no delay in appointing the inquiring authorities where necessary;
(vii) To examine the inquiry officer’s report, keeping in view the evidence adduced by the prosecution and the defence during the course of inquiry, and obtaining orders of the competent authority about further course of action to be taken and also obtaining the Commission’s second stage advice and UPSC’s advice, where necessary;
(viii) To ensure that the disciplinary authority concerned, issued a speaking order, while imposing a punishment on the delinquent employee. The order to be issued by the disciplinary authority should show that the disciplinary authority had applied its mind and exercised its independent judgment;
(ix) To ensure that rules with regard to disciplinary proceedings are scrupulously followed at all stages by all concerned as any violation of rules would render the entire proceedings void;
(x) To ensure that the time limits prescribed for processing the vigilance cases at various stages, as under, are strictly adhered to:

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<tr>
<th>S. No.</th>
<th>State of Investigation or inquiry</th>
<th>Time limit</th>
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<tr>
<td>1.</td>
<td>Decision as to whether the complaint involves a vigilance angle</td>
<td>One month from the receipt of the complaint</td>
</tr>
<tr>
<td>2.</td>
<td>Decision on complaint, whether to be filed or to be entrusted to CBI or to sent to the concerned administrative authority for necessary action.</td>
<td>One month from the receipt of the complaint</td>
</tr>
<tr>
<td>3.</td>
<td>Conduction investigation and submission of report</td>
<td>Three months</td>
</tr>
<tr>
<td>4.</td>
<td>Department’s comments on the CBI reports in cases requiring Commission’s advice</td>
<td>One month from the date of receipt of CBI report by the disciplinary authority</td>
</tr>
<tr>
<td>5.</td>
<td>Referring departmental investigation reports to the Commission for Advice</td>
<td>One month from the date of receipt of investigation report</td>
</tr>
<tr>
<td>S. No.</td>
<td>State of Investigation or inquiry</td>
<td>Time limit</td>
</tr>
<tr>
<td>-------</td>
<td>--------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>6.</td>
<td>Reconsideration of the Commission’s advice, if required</td>
<td>One month from the date of receipt of Commission’s advice</td>
</tr>
<tr>
<td>7.</td>
<td>Issue of charge-sheet if required</td>
<td>(i) one month from the date of receipt of Commission’s advice</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(ii) Two months from the date of receipt of investigation report</td>
</tr>
<tr>
<td>8.</td>
<td>Time for submission of defence statement</td>
<td>Ordinarily ten days or as specified in CDA Rules</td>
</tr>
<tr>
<td>9.</td>
<td>Consideration of defence statement</td>
<td>15(fifteen) days</td>
</tr>
<tr>
<td>10.</td>
<td>Issue of final orders in minor penalty cases</td>
<td>Two months from the receipt of defence statement</td>
</tr>
<tr>
<td>11.</td>
<td>Appointment of IO/PO in major penalty cases</td>
<td>Immediately after receipt of defence statement</td>
</tr>
<tr>
<td>12.</td>
<td>Conducting departmental inquiry and submission of report</td>
<td>Six months from the date of appointment of IO/PO</td>
</tr>
<tr>
<td>13.</td>
<td>Sending a copy of the IO’s report to the CO for his representation</td>
<td>(i) Within 15 days of receipt of IO’s report if any of the Articles of charge has been held as proved</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(ii) 15 days if all charges held as not proved- reason for disagreement with IO’s findings to be communicated</td>
</tr>
<tr>
<td>14.</td>
<td>Consideration of CO,s representation and forwarding IO's report to the Commission for second stage advice</td>
<td>One month from the date of representation</td>
</tr>
<tr>
<td>15.</td>
<td>Issuance of orders on the Inquiry report</td>
<td>(i) One month from the date of Commission’s advice</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(ii) Two months from the date of receipt of IO’s report if Commission’s advice is not required</td>
</tr>
</tbody>
</table>

Although the discretion to place a public servant under suspension, when a disciplinary proceedings is either pending or contemplated against him, is that of the disciplinary authority, the CVO is expected to assist the disciplinary authority in proper exercise of this discretion. The CVO should also ensure that all cases in which the officers concerned have been under suspension are reviewed within a period of 90 days with a view to see if the suspension order could be revoked or if there was a case for increasing or decreasing the subsistence allowance.

The Commission’s advice in respect of category ‘A’ officials is to be obtained at two stages; firstly on the investigation report in terms of para 2.14.1(iv) and secondly on the inquiry report. The CVO to ensure that the cases receive due consideration of the appropriate disciplinary authority before these are referred to the Commission and its tentative recommendation is indicated in the references made to the Commission. The references to the Commission should be in the form of a self-contained note along with supporting documents, viz the complaint, investigation report, statement/ version of the concerned employee(s) on the allegations established against them and
the Comments of the administrative authorities thereon in first stage advice cases; and copy of the charge-sheet, statement of defence submitted by the concerned employee, the report of the inquiring authority along with connected records and the tentative views/findings of the disciplinary authority on each article of charge in second stage advice cases. The CVO may also ensure that the bio-data of the concerned officers is also furnished to the Commission in the prescribed format, while seeking its advice. The cases requiring reconsiderations of the Commission’s advice may, however, be sent with the approval of the Chief Executive, or the Head of the Department, as the case may be.

The CVO should conduct regular and surprise inspections in the sensitive areas in order to detect if there have been instances of corrupt or improper practice by the public servants. He should also undertake prompt and adequate scrutiny of property returns and intimations given by the public servants under the conduct rules and proper follow up action where necessary. In addition, he should also gather intelligence from its own sources in whatever manner he deems appropriate about the misconduct/malpractices having been committed or likely to be committed.

CVO should invariably review all pending matters, such as investigation reports, disciplinary cases and other vigilance complaints/cases in the first week of every month and take necessary steps for expediting action on those matters.

The CVO would arrange quarterly meetings to be taken by the Secretary of the Ministry/Department or the Chief executive for reviewing the vigilance work done in the organisation.

The CVO would also arrange periodical meetings with the officers of the CBI to discuss matters of mutual interests, particularly those arising from inquiries and investigations.

The CVO would also ensure that monthly reports of the work done on vigilance matters is furnished to the Commission by fifth day of the following months.

The CVO would ensure that the Annual Report(AR) of the previous year (Jan. to Dec.) of the work done on vigilance matter is furnished to the Commission by 30th Jan. of the succeeding year.

The CVO would also ensure that quarterly progress reports(QPR) on the civil, electrical, horticulture works in progress and also on procurement of stores are furnished to the CTEs by 15th day of the month following the quarters ending March, June,September and December.

VIGILANCE STRUCTURE IN THE DEFENCE ACCOUNTS DEPARTMENT. CHIEF VIGILANCE OFFICER/VIGILANCE OFFICERS

In accordance with provision of para 7 and 8 of the Central Vigilance Scheme, the officer entrusted with vigilance work in a Ministry/Department will be designated as Chief Vigilance Officer. The Chief Vigilance Officer is responsible for such items of work as regular and surprise inspection of sensitive areas, review/streamlining of procedures which appear to afford scope for corruption or misconduct and for initiating other measures for the prevention /detection
and punishment of corruption and other malpractices in his/her department and its subordinate offices. Chief Vigilance Officer is appointed after prior consultation with Central Vigilance Commission.

In the Headquarters office, an officer in the rank of Joint CGDA functions as a part time Chief Vigilance Officer of the entire organisation. In the field organisations Vigilance Officers are appointed in consultation with the Chief Vigilance Officer. The officers are of the rank of Jt. CDA and in the absence of JCDA, officers of the rank of DCDA/ACDA function as Vigilance Officers.

A list of Chief Vigilance Officer/Vigilance Officers in the department together with their residential addresses, telephone numbers is forwarded to the Central Vigilance Commission, and the Vigilance Division of the Administrative Ministry in the second week of April/August/December each year.
Action may not always bring happiness ... but there is no happiness without action.

- Benjamin Disraeli
Chapter 6

WHAT IS VIGILANCE ANGLE?

Vigilance angle is obvious in the following acts:

(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.

There are, however, 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 – these are some of the irregularities where the disciplinary authority with the help of the CVO should carefully study the case and weigh the circumstances to come to a conclusion whether there is reasonable ground to doubt the integrity of the officer concerned.

The raison d’être of vigilance activity is not to reduce but to enhance the level of managerial efficiency and effectiveness in the organisation. Commercial risk taking forms part of business. Therefore, every loss caused to the organisation, either in pecuniary or non-pecuniary terms, need not necessarily become the subject matter of a vigilance inquiry. Thus, whether a person of common prudence, working within the ambit of the prescribed rules, regulations and instructions, would have taken the decision in the prevailing circumstances in the commercial/operational interests of the organisation is one possible criterion for determining the bonafides of the case. A positive response to this question may indicate the existence of bona-fides. A negative reply, on the other hand, might indicate their absence.

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.
‘It is the quality of our work which will please God and not the quantity.’
Chapter 7

Indian Judicial System

INTRODUCTION

The Judiciary occupies an important place in the Indian federal system. The Constitution has divided their jurisdictions through three Lists: the Union List, the State List and the Concurrent List. However there is always a possibility of disputes between the Centre and the State Governments or between the State Governments. The Judiciary plays a crucial role in such situations. The Constitution of India lays down that the Judiciary would resolve disputes between the Centre and the States or between the States. Moreover, the Judiciary is also responsible for ensuring that the rights of citizens are protected and the powers of the Government do not cross the limits prescribed. An independent judicial set-up is a must for any Federation. It ensures, on one hand, authentic interpretation of the Constitution and on the other it resolves disputes, constitutional or otherwise, between the Union and a unit or units of the Federation. Unlike other federations, India has a single, unified judicial system for the entire country. The Supreme Court is at the top of the judicial system. There are High Courts at the State level.

Central Administrative Tribunals have been set up for providing speedy and inexpensive relief to persons in services and posts under the Union, by adjudicating in the matter of their complaints and grievances on recruitment and conditions of service.

Recently, the Armed Forces Tribunals have been set up to expeditiously provide relief to the Armed Forces personnel.

There are subordinate Courts at the district level.

A diagram representing the hierarchy of the Indian Judicial system is given below:
DISTRICT AND SUBORDINATE COURTS

The organisation and functions of the subordinate courts throughout the country are uniform, except with minor local variations. The entire subordinate courts function under the supervision of the concerned High Courts. In every district there are civil and criminal courts. The Court of the District Judge is the highest court in a district. The District Judge deals with civil cases and the Sessions Judge deals with criminal cases. He can award capital punishment subject to the approval of the High Court. District Judge/Sessions Judge also hears appeals against the decisions of the Lower Courts. Besides these courts, there are courts of sub-judges, munsiff courts and courts of small causes. There are also courts of second class and third class magistrates.

The judges of the District Court are appointed by the Governor of the concerned State in consultation with the High Court. A person who has been a pleader or an advocate for seven years or an officer in the judicial service of the Union or the State is eligible for appointment. Regarding positions, other than those of district judges, the Government in consultation with the High Court and the State Public Service commission makes appointments. At least three years experience as an advocate or a pleader is one of the essential qualifications for these appointments.

The District Courts hear appeals against decisions of sub-judges. It hears cases relating to the disputes of property, marriage and divorce. The civil courts exercise jurisdiction over such matters as guardianship of minors and lunatics.

CENTRAL ADMINISTRATIVE TRIBUNALS

Introduction

Central Administrative Tribunals were set up under Article 323-A of the Constitution of India with Benches at several places covering the entire country. The Benches started functioning from 1985. The objective has been to satisfy the long-felt need to have machinery, independent of existing judiciary, for providing speedy and inexpensive relief for persons in services and posts under the Union, by adjudication in the matter of their complaints and grievances on recruitment and conditions of service. Earlier, it was left to the aggrieved to move the High Court of Judicature under Article 226 of the Constitution of India and since the High Courts were dealing with all types of cases, there was an inordinate delay in settlement of these Writs. After the decision of the High Court, some more years were spent to go through for an appeal in the Supreme Court.

The Central Administrative Tribunal, under the Administrative Tribunals Act, 1985 is empowered to exercise all jurisdiction, powers and authority exercisable by all courts, except the High Court in Writ jurisdiction and Hon'ble Supreme Court, in relation to all service matters.

Jurisdiction, powers and authority of the Central Administrative Tribunal

(1) Save as otherwise expressly provided in the AT Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all
jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to-

(a) Recruitment and matters concerning recruitment to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being in either case, a post filled by a civilian;

(b) All service matters concerning-
   (i) A member of any All-India Service; or
   (ii) A person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or
   (iii) A civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence service or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or society] owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or of referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a state Government or any local or other authority or any corporation; or society’s or other body, at the disposal of the Central Government for such appointment.

Explanation - for the removal of doubts, it is hereby declared that references to 'Union' in this sub-section shall be construed as including references also to a Union territory.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority of corporation or Societies controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or Corporations or Societies.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or Corporation or Societies, all the jurisdiction, powers and authority exercisable immediately before that date by all court except the Supreme Court in relation to-

(a) Recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or Corporation of society; and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or
Corporation or Society and pertaining to the service of such person in connection with such affairs.

A special Bench, consisting of seven judges of the Supreme Court, has ruled that the decisions of the CAT will be subject to the scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls.

Table of jurisdiction of Benches of Central Administrative Tribunal

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Bench</th>
<th>Jurisdiction</th>
<th>Postal Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Principal Bench New Delhi</td>
<td>National Capital Territory of Delhi</td>
<td>Copernicus Marg, New Delhi-110 001</td>
</tr>
<tr>
<td>2</td>
<td>Ahmedabad</td>
<td>State of Gujarat</td>
<td>Opposite Sardar Patel Stadium, Navrangpura, Ahmedabad-380 009</td>
</tr>
<tr>
<td>3</td>
<td>Allahabad</td>
<td>(i) State of Uttar Pradesh excluding Districts mentioned against Serial No. 4 under the jurisdiction of Lucknow (ii) State of Uttarakhand</td>
<td>23-A, Thorn Hill Road, Post Bag No. 013, Allahabad-211001</td>
</tr>
<tr>
<td>4</td>
<td>Lucknow</td>
<td>Districts of Lucknow, Hardoi, Kheri, Rai Bareli, Sitapur, Unnao, Faizabad, Ambedkar Nagar, Bahraich, Barabanki, Shravasti Gonda, Balarampur, Partapgarh, Sultanpur in the State of Uttar Pradesh</td>
<td>Gandhi Bhawan (Opposite Residency), Gandhi Smarak Nidhi, Lucknow-266 001</td>
</tr>
<tr>
<td>5</td>
<td>Bangalore</td>
<td>State of Karnataka</td>
<td>2nd Floor Commercial Complex (BDA), Indira Nagar Bangalore-560 038</td>
</tr>
<tr>
<td>6</td>
<td>Chandigarh</td>
<td>(i) State of Jammu and Kashmir (ii) State of Haryana (iii) Sate of Himachal Pradesh (iv) State of Punjab (v) Union Territory of Chandigarh</td>
<td>Opposite Hotel Shivalik View, Sector 17, Chandigarh- 160 017</td>
</tr>
<tr>
<td>7</td>
<td>Chennai</td>
<td>(i) State of Tamil Nadu (ii) Union Territory of Puducherry (erstwhile Pondicherry)</td>
<td>Additional City Civil Court Building, High Court Campus, Chennai- 600 104</td>
</tr>
<tr>
<td>8</td>
<td>Cuttack</td>
<td>State of Orissa</td>
<td>Rajaswa Bhawan, 4th Floor Cuttack- 753 002</td>
</tr>
<tr>
<td>9</td>
<td>Ernakulam</td>
<td>(i) State of Kerala (ii) Union Territory of Lakshadweep</td>
<td>Kandomkulathy Towers, 5th - 6th Floor, Opposite Maharaja College, MG Road, Ernakulam, Cochin- 682 001</td>
</tr>
</tbody>
</table>
## RTC MEERUT: COURT/CAT CASES, VIGILANCE, DISCIPLINE, ETC.

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Bench</th>
<th>Jurisdiction</th>
<th>Postal Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.</td>
<td>Guwahati</td>
<td>(i) State of Assam (ii) State of Manipur (iii) State of Meghalaya (iv) State of Nagaland (v) State of Tripura (vi) State of Arunachal Pradesh (vii) State of Mizoram</td>
<td>Rajgarh Road Shillong Road (Bhangagarh), Post Box No. 58, GPO, Guwahati- 781 005</td>
</tr>
<tr>
<td>11.</td>
<td>Hyderabad</td>
<td>State of Andhra Pradesh</td>
<td>New Insurance Building Complex, 6th Floor Tilak Marg (Abids), Post Box No. 07, Hyderabad- 500 001</td>
</tr>
<tr>
<td>12.</td>
<td>Jabalpur</td>
<td>(i) State of Madhya Pradesh (ii)State of Chattisgarh</td>
<td>Caravs Building 15 Civil Lines Jabalpur- 482 001</td>
</tr>
<tr>
<td>13.</td>
<td>Jaipur</td>
<td>Districts of Ajmer, Alwar, Baran, Bharatpur, Bundi, Dausa, Dholpur, Jaipur, Jhalawar, Jhunjhunu, Kota, Sawai Madhopur, Sikar, Tonk and Karauli in the state of Rajasthan</td>
<td>C-42 Bhagat Watika, Civil Lines, Raj Bhavan Road, Jaipur- 302 006</td>
</tr>
<tr>
<td>14.</td>
<td>Jodhpur</td>
<td>State of Rajasthan excluding the Districts mentioned against Serial No 13 under the jurisdiction of Jaipur Bench.</td>
<td>House No. 69, 1st Polo (PAOTA), Post Box No. 619, Jodhpur- 342 006.</td>
</tr>
<tr>
<td>15.</td>
<td>Kolkata</td>
<td>(i) State of Sikkim (ii) State of West Bengal</td>
<td>CGO Complex, Nizam's Place Compound, 2nd MSO Building, 11th-12th Floor, 234/4, AJC Bose Road, Kolkata-700 020</td>
</tr>
<tr>
<td>16.</td>
<td>Mumbai</td>
<td>(i) State of Maharashtra (ii) State of Goa (iii)Union territory of Dadra and Nagar Haveli (iv) Union Territory of Daman and Diu</td>
<td>Gulestan Building, No 6, 3rd- 4th Floor, Prescot Road, Near Mumbai Gymkhana Club (Fort) Mumbai- 400 001</td>
</tr>
<tr>
<td>17.</td>
<td>Patna</td>
<td>(i) State of Bihar (ii) State of Jharkhand</td>
<td>88-A, BM Enterprises, Sri Krishna Nagar, Patna- 800 001</td>
</tr>
</tbody>
</table>

### Composition

Each Tribunal consists of a Vice-Chairman in addition to Judicial/Administrative Members to the extent necessary. The Principal Bench located at New Delhi is the only Bench that is headed by a Chairman. It also has a Vice-
Chairman, besides Judicial/ Administrative Members. The Administrative Members possess necessary expertise and familiarity with administrative procedures and rules, to deal with service problems in a satisfactory way by finding out the facts and knowing relevant rules.

**Service Matter**

Service matter has been defined to mean all matters relating to conditions of service, viz.:-

(i) Remuneration (including allowances), pension and other retirement benefits;
(ii) Tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
(iii) Leave of any kind;
(iv) Disciplinary matters;
(v) Any other matter.

The definition is quite expansive and of wide connotation and has been held to cover other incidental and ancillary matters like:-

(i) Transfer;
(ii) Allotment of quarters;
(iii) Eviction proceedings under Public Premises Act;
(iv) Determination of marital status for purposes of family pension.

**Application**

In the application, against the relevant column, the applicant has to set out the facts of the case in a chronological order, each paragraph containing as nearly as possible, a separate issue of fact.

The grounds for relief with legal provision are also to be furnished concisely under the different heads and numbered serially.

The application should also contain prayer of applicant specifying relief sought for, explaining grounds for such relief and legal provision, if any, relied upon.

The application should be based upon a single cause of action and may seek one or more relief, provided that they are consequential to one another.

Interim relief, if any prayed for, pending final decision on the application, should be incorporated in application itself.

**Form and contents**

Every application is to be typed in double space on one side on thick paper of good quality (A-4 size) and must be accompanied by the following documents:-

(i) an attested copy of the order against which the application is filed;
(ii) copies of documents relied upon by the applicant and referred to in application duly attested;
(iii) an index of documents;
(iv) "Vakalatnama" duly executed in favour of legal practitioner filing the application;
(v) particulars of Bank Draft/Postal Order towards filing fee.

The application should be presented in triplicate in the following two compilations:

(i) **Compilation No. 1:-** application along with the impugned order
(ii) **Compilation No. 2:-** all other documents and annexures referred to in the application in a paper-book form.

When the number of respondents is more than one, the applicant should furnish extra copies equal to the number of the respondents together with unused file-size envelope bearing the full address of each respondent.

**Filing fee**

A fixed fee of Rs. 50/- in the form of demand draft/postal order has to be paid along with each application, filed individually, jointly or in a representative capacity.

The Tribunal has power to exempt the payment of fee if it is satisfied that applicant is unable to pay the same due to his financial condition.

**Filing of Application**

A person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance under Section 19 of the Act, in the prescribed form, giving details like number and the authority which has passed the order, against which the application is made.

**Section 19 of Administrative Tribunal Act.**

**Applications to the Tribunals**

1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the tribunal for redressal of his grievances.

Explanation- For the purposes of this sub-section, "order" means an order made-
(a) by the Government or a local or other authority within the territory of India or under control of the Government of India or by any Corporation or Society owned or controlled by the Government: or
(b) by an officer, committee or other body or agency of the Government or a local or other authority or Corporation or Society referred to in clause (a).

2) Every application under sub-section (1) shall be in such form and be accompanied by such fee (if any, not exceeding one hundred rupees) in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government.
3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the tribunal is not so satisfied, it may summarily reject the application after recording its reasons.

4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter thereafter be entertained under such rules.

Status of Applicant

Normally only an individual person has to file an application. The Tribunal may, however, permit more than one person to join together and file a single application, if it is satisfied, having regard to the cause of action and the nature of relief prayed for, that have a common interest in the matter. A separate application has to be filed seeking necessary permission in this regard.

Such permission is also granted to an association representing members desirous of joining in a single application and having a common cause of action.

Right of applicant to take assistance of legal practitioner and of Government, etc., to appoint Presenting Officers

(1) A person making an application to a Tribunal under this Act may either appear in person or take assistance of a legal practitioner of his choice to present his case before the tribunal.

(2) The Central Government or a State Government or a local or other authority or Corporation or Society to which the provisions of sub-section (3) of Section 14 or sub-section (3) of Section 15 apply, may authorize one or more legal practitioners or any of its officers to act as Presenting Officers and every person so authorized by it may present its case with respect to any application before a Tribunal.

Exhausting remedies

The Act specifically lays down that the tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all remedies available to him under the relevant service rules as to redressal of grievance. An applicant is deemed to have availed all remedies available to him, if final order has been passed on his appeal/representation by the highest authority competent to pass such an order under relevant rules/ orders or if no such order is passed, after lapse of a period of six months from the date of such appeal/ representation having been made.

The expression "ordinarily" in the content means generally and not always or in all cases. It indicates that the Tribunal is vested with some discretion in the matter, which is to be exercised sparingly in extraordinary circumstances.
Section 20 of Administrative Tribunal Act.

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances-

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation was made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

Limitation

(i) An application before the Tribunal has to be filed within one year from the date on which the final order has been made. Where an appeal/representation has been submitted by the person and the authority competent to pass final order has not passed the said order, application has to be filed after expiry of a period of six months from the submission of such appeal/representation and within one year from the date of expiry of the said period of six months. The application form itself provides for a declaration from the applicant that the application is within the limitation period prescribed.

(ii) The Act provides for admission of an application for disposal, in relaxation of the above limitation, if sufficient cause is shown for not making the application within such period. A separate application is required to be filed for condonation of delay, supported by an affidavit.

(iii) The period of limitation is reckoned with reference to the date of initial final order and is not revived by making repeated representation to the same authority.

Section 21 of Administrative Tribunal Act.

(1) A Tribunal shall not admit an application-

(a) in a case where a final order such as is mentioned in clause (a) of subsection (2) of Section 20 has been made in connection with the grievance
unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in Clause (b) of sub-section(2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-

(a) The grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a), or, as the case may be, Clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (2) an application may be admitted after the period of one year specified in Clause (a) or Clause (b) of sub-section (1) or as the case may be the period of six months specified in sub section (2), if the applicant satisfies the tribunal that he had sufficient cause for not making the application within such period.

Place of filling

(i) An application is ordinarily to be filed with the Registrar of the Bench of the Tribunal within whose jurisdiction the applicant is for the time being posted or the cause of action has arisen.

(ii) However, with the permission of the Chairman of the Principal Bench, New Delhi, an application may be filed there, heard and disposed of.

(iii) The application form itself provides for a declaration to be furnished by the applicant that the subject matter, against which he wants redressal, is within the jurisdiction of the Tribunal, where he filed the application.

Power of Chairman to transfer cases from one bench to another:-

The Chairman may transfer any case pending before one Bench, for disposal, to any other Bench on the application of any of the parties after notice to the parties and after hearing them, as he may desire to be heard, or on his own motion, without such notice.

Scrutiny of application

On scrutiny of the application at the registry, the same, if found to be in order, will be duly registered, numbered and placed before the Bench for admission. Defects, if any, noticed on scrutiny will be got rectified before registration.
Terms of Notices

After hearing the petitioner, the Tribunal if finds merit prima-facie in the case passes an order of issuing notice to the respondent with the direction that the respondent should appear on the given date and should file its reply and all the supported documents.

Reply of Respondent

(i) Respondent Ministries/Departments should ensure that notice received from the Tribunal are attended to and complied with promptly. It is enjoined that whenever notices are received from the Tribunal, the Department concerned should immediately get in touch with the Senior Standing Counsel of the concerned Bench for handling the case. He should be fully briefed in the matter so that he files the written statement in reply to the application within the time allowed, after the same is duly vetted by Min of Law & Justice.

(ii) In the reply, the respondent has to specifically admit, deny or explain the fact stated by the applicant in his application and also state such additional facts as may be found necessary for a just decision of the case. The reply to the application should be filed in triplicate along with the documents relied upon in paper-book form. One copy of the reply along with the paper book should be furnished to the applicant or his legal practitioner.

Posting of cases for admission/orders before the bench

(i) Subject to the orders of the Chairman/ Vice-Chairman to the concerned bench all registered applications-petitions shall be posted for admission orders before the appropriate bench on the next working day. The notice of posting shall be given by notifying in the daily cause list for the day.

(ii) Appendix I and Appendix II to the CAT rules which may be amended from time to time specify about the nature of cases to be heard by single member bench or larger bench. It is very important to verify that the bench hearing the particular matter has been notified to hear such matters as per Appendix I & II.

Ex parte Hearing

(i) If on the date of Hearing, the applicant appears and the respondent Department/Ministry is not represented, the Tribunal may adjourn the hearing or hear and decide the application ex parte. In such an event, the respondent may apply to the Tribunal for setting aside the order, giving sufficient cause to the satisfaction of the Tribunal and the Tribunal may set aside the ex parte hearing and hear the case afresh.

(ii) It is not obligatory for the Tribunal to dismiss an application for default if the applicant is not present or represented when the matter is called for hearing. In the absence of the applicant, the Tribunal can hear the Counsel for the respondent, peruse the records placed before it, consider the applicant’s grievance with reference to the grounds urged by him in his application and then decide the application on merits.
Decision by majority

If the Members of a Bench differ in opinion on any point/points will be decided according to the opinion of the majority. But, if the Members are equally divided, they will state the point/points on which they differ and make a reference to the Chairman, who will either hear the point/points himself or refer the case for hearing by one or more of the other Members and decide according to the opinion of the majority of the Members who heard the case, including those who first heard it.

Decision by Tribunal

The Tribunal will take a decision on perusal of the documents filed by both the sides, written representations made and oral arguments advanced at the time of the hearing on behalf of both the sides. If necessary, it can hold an enquiry as provided in the Act, the Tribunal having the same powers as that of a Civil Court.

Action on judgment

(i) Immediately on the receipt of judgment/order of the tribunal the said judgment is required to be gone through and to be verified that there may not be any factual or legal error committed by the tribunal while passing the order. It is open to the Department to seek review of such order/judgment where any apparent factual error has been committed and it is found that the order/judgment is passed against the settled principle of law such judgment should be challenged by way of writ petition under Article 226 if the Constitution before the concerned High Court.

(ii) If the competent authority finds that neither there is any factual error nor there is any legal error, then the order of the tribunal should be complied with immediately but not later that the time limit prescribed in the order or within six months of the receipt of order where no such time limit is indicated. It is important to note that failure to implement the order, unless the same is challenged and stay of operation of the order is obtained, in time may give rise to cause of action for initiating contempt proceedings.

(iii) If within the given time neither the order is challenged nor due to some difficulties or departmental delays the same is implemented it is always advisable to approach the tribunal with a prayer to extend the time for implementing the order in this way there will not be any risk of facing contempt proceedings.

Provision of Review

(i) If the applicant or the respondent is not satisfied with the judgment recorded, it is open to them to seek review of the judgment by filing a petition within thirty days of the communication of the order either by hand to the party or to his counsel by sending a true-copy of the order by registered post properly addressed and prepaid.

(ii) A Review petition will lie only when there is a glaring omission, patent mistake or error in the judgment. Unless otherwise ordered a review petition will be disposed by the same Bench that passed the order and by circulation, which may either dismiss the petition or direct issue of notice to the opposite
party. Once a revision petition is disposed of, no petition for further review can be filed.

Powers of Tribunal

(i) The power conferred on the Tribunal by Section 22 of the Act is very wide. The Tribunal is not bound by the procedure laid down by the Code of Civil Procedure or the Rules of Evidence contained in the Evidence Act. The Tribunal is primarily bound by the principles of natural justice and the rules made by the Central Government. It could adopt inquisitional procedure also to meet the ends of justice, without however, offending the principles of natural justice.

(ii) The concept of natural justice has undergone a great deal of change in recent years. Natural justice demands or requires a fair trial; an authority should act judiciously, meaning not arbitrarily or capriciously, but justly and fairly.

(iii) The Tribunal can decide cases on the basis of evidence taken on affidavits and need not take oral evidence. The Tribunal is entitled to grant such relief, which may be warranted on the facts of the case before it.

(iv) In the matter relating to disciplinary proceeding, it has been held that the Tribunal cannot go into the basic decision, that is, the nature of penalty imposed. It can only interfere in case just to see whether:
   (i) statutory provision or rules prescribing the mode of enquiry were disregarded;
   (ii) rules of natural justice were violated;
   (iii) there was no evidence, that is, punishment has been imposed in the absence of supporting evidence. If there are some legal evidences on which the findings can be based, the Tribunal cannot go into the adequacy or reliability of the evidence, even if it was of the view that on the same evidence, its conclusion may have been different.
   (iv) consideration extraneous to the arbitrary or the merits of the case, taken into account; and
   (v) the conclusion was so wholly arbitrary and capricious that no reasonable person could have easily arrived at the conclusion.

Procedure and powers of Tribunals

(1). A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure 1908 (5 of 1908), but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of place and time of its inquiry and deciding whether to sit in public or in private.

(2) A Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents and written representation and after hearing such oral arguments, as advanced.

(3) A Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908 ), while trying a suit, in respect of the following matters, namely:-
(a) summoning and enforcing the attendance of any person and examining him on oath;
(b) requiring the discovery and production of documents;
(c) receiving evidence on affidavits;
(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act 1872 (1 of 1872), requisitioning of any public record or document or copy of such record or evidence on affidavits;
(e) issuing commissions for the examination of witnesses or, documents;
(f) reviewing its decisions;
(g) dismissing a representation for default or deciding it ex parte;
(h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and any other matter which may be prescribed by the Central Government.

Power to punish for contempt

A Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts act, 1971, shall have effect subject to the modifications that-

a) the references therein to a High Court shall be construed as including a reference to such Tribunal;
b) the references to the Advocate-General in Section 15 of the said Act shall be construed-
   i. in relation to the Central Administrative Tribunal, as a reference to the Attorney-General or the Solicitor-General or the Additional Solicitor-General; and
   ii. in relation to an Administrative Tribunal for a State or a Joint Administrative Tribunal for two or more States, as a reference to the Advocate-General of the State or any of the States for which such Tribunal has been established.

Distribution of business amongst the Benches

(1) where, any Benches of a Tribunal are constituted, the appropriate Government may, from time to time, by notification, make provisions as to the distribution of the business of the Tribunal amongst the benches and specify the matter, which may be dealt with by each Bench.

(2) If any question arises as to whether any matter falls within the purview of the business allocated to a Bench of a Tribunal, the decision of the Chairman thereon shall be final.

Explanation- For the removal of doubts, it is hereby declared that the expression 'matter' includes applications under Section 19.
Conditions as to making of interim orders

(i) No interim order shall be made on, or in any proceedings relating to an application unless:

(a) Copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made and.

(b) Opportunity is given to such party to be heard in the matter.

(ii) The Tribunal may dispense with the requirement and make an interim order as an exceptional measure if it is satisfied, for reasons to the recorded in writing, that it is necessary to do so for preventing any loss being caused to the applicant which can not be adequately compensated in money but any such interim order shall, if it is not sooner vacated, cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the Tribunal has continued the operation of the interim order.

ARMED FORCES TRIBUNAL

Paving the way for the creation of the proposed independent adjudicating forum for dispensing cost effective and speedy justice to the armed forces personnel, the Union Cabinet on Thursday gave its approval for the creation of 31 posts for the Armed Forces Tribunal. The posts include one of chairperson and 29 posts of members for the principal bench at New Delhi and eight regional branches. It also includes one post of principal registrar at the principal bench. The process for the setting up of the Armed Forces Tribunal gathered momentum after Defence Minister AK Antony assumed charge in October 2006.

The principal bench at New Delhi will have three courts and will have jurisdiction over High Courts in the state of Delhi. Similarly, the Chandigarh and Lucknow benches will have three courts each. The Chandigarh bench will have jurisdiction over Punjab, Haryana, Jammu and Kashmir (J&K) and Himachal Pradesh. The Lucknow bench will have jurisdiction over Uttar Pradesh, Uttarakhand, Madhya Pradesh and Chhatisgarh. The other locations for the benches with one court each will be Kolkata, Guwahati, Mumbai, Kochi, Chennai and Jaipur. The Kolkata bench will have jurisdiction over West Bengal, Orissa, Jharkhand, Bihar and Andaman and Nicobar Islands. The Guwahati bench will have jurisdiction over Assam, Manipur, Nagaland, Meghalaya, Tripura, Mizoram and Arunachal Pradesh. The Mumbai bench will have jurisdiction over Maharashtra, Goa and Gujarat. While Kochi bench will have jurisdiction over Kerala and Karnataka, Chennai bench will look after Tamil Nadu and Andhra Pradesh. The Jaipur bench will have jurisdiction over Rajasthan.

The setting up of the Armed Forces Tribunal will fulfill a long-felt need of the country’s three defence services. Over 9,800 cases filed by service personnel are pending before various High Courts. The maximum number of cases numbering 2,487 will be transferred to the Chandigarh bench while 2,407 will be adjudicated by the Lucknow bench. Two thousand three hundred and six (2,306) cases are proposed to be transferred to the Delhi principal bench.
The Armed Forces Tribunal Act, 2007, which was passed by the Parliament during the Winter Session of 2007 received the assent of the President on 25th December, 2007. The Act was notified on 28th December, 2007. It provides for adjudication or trial by the tribunal of disputes and complaints with respect to commission, appointments, enrolment and conditions of service in respect of persons subject to Three Services Acts as also for appeals arising out of orders, findings or sentences of court martial held under the said Acts and for matters connected with them. The Act came into force with effect from 15th June, 2008. The Tribunal will have original jurisdiction in service matters and appellate jurisdiction in court martial matters. The chairman of the Tribunal will be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court. The Tribunal will consist of one Chairperson, 14 judicial and 15 administrative members. The administrative members shall be officer of the rank of Major General or above in the Army or equivalent rank in the Navy or the Air Force with three years of service in that rank. Judge Advocate General (JAG) of three Services with at least one year of service as JAG shall also be eligible. The judicial member should be serving or retired judge of the High Court. All appointments to the Tribunal will be made in consultation with the Chief Justice of India. The Tribunal shall have powers to punish for its contempt.

HIGH COURTS

INTRODUCTION

(i) India at present has 28 States and 7 Union Territories The Constitution of India provides for one High Court for every federating State in the country. The Parliament has, however, been given power to put even more States under one High Court. It all depends on the area and the population that a High Court has to serve and the amount of work it has to handle. For example, there is only one High court for the two States of Punjab and Haryana. Similarly, Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland and Tripura have only one High Court.

(ii) The High Court consists of a Chief Justice and some other judges appointed by the President of India. The strength of judges in the High Court varies from State to State.

(iii) The High Court have three types of jurisdiction. These are original, appellate and administrative. Under the original jurisdiction, it has power to issue directions, order including writs to any authority and any Government within its jurisdiction against the volition of the statutory/fundamental rights of citizens. Petitions challenging the election of a member of Parliament or a local body can be filed in the High Court of the concerned State. It can also try civil and criminal cases. The appellate jurisdiction of the High Court includes the power to hear appeals about civil and criminal cases against the decisions of lower courts. Under its administrative jurisdiction, it has authority to supervise the working of all subordinate Courts/Tribunals. The High Court also is a Court of Record and has the power to punish for contempt of court.

(iv) Articles 214 to 231 of the Constitution of India deals with the powers & functioning of High Court, appointment/removal of judges, etc. The important Articles of the Constitution are reproduced in the succeeding pages.
THE HIGH COURTS IN STATES

Relevant provisions in Constitution

Article 214. **High Courts for State:**- There shall be a High Court for each State.

**Status of High Courts:**- All the High Court have the same status under the Constitution. Judges of the different High Courts also belong to the same family, even though there may be slight variations in the authorities that are to be consulted at the time of their appointment.

But they do not constitute anything like a single All India Cadre. Each Judge is appointed to a particular High Court and may be transferred to another High Court only by virtue of the express provision in Art. 222.

Article 215. **High Court to be Court of record:**- Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

Article 216. **Constitution of High Court:**- Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint.

Article 217. **Appointment and conditions of the office of a Judge of a High Court:**- Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of State, and in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court and shall hold office, in the case of an additional or acting Judge, as provided in Article 224, and in any other case, until he attains the age of sixty-two years.

Article 220. **Restriction on practice after being a permanent Judge:**- No person who, after the commencement of this constitution, has held office as a permanent Judge of a High Court shall plead or act in any court or before any authority in India except the Supreme Court and the other High Court.

Article 226. **Power of High Courts to issue certain writs:**- Notwithstanding anything in Article 32, every High Court shall have powers, through out the territories in relation to which it exercised jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including (writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any rights conferred by part III and for any other purpose.)

Article 227. **Power of superintendence over all courts by High Court:**-
(1) Every High Court shall have superintendence over all Court and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may
(a) Call for returns from such courts.
(b) Make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and
(c) Prescribe forms in which the books, entries and accounts shall be kept by the officers of any such court.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocate and pleaders practicing therein:
Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this Article shall be deemed to confer of High Court powers of superintendence over any court or tribunal constituted by or any law relating to the Armed Forces.

It is now settled that the power of 'superintendence' conferred upon the High Court by Art. 227, is not confined to administrative superintendence only, but includes the power of judicial revision also, even where no appeal or revision lies to the High Court under the ordinary law.

This power involves a duty on the High Court to keep the inferior Court and tribunal within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner.

But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law of justice where grave injustice would be done unless the High Court interferes.

Thus, where an appellate authority had ample revisional authority, the order of such authority would not be set aside (under Art. 227) where such authority, on appeal, quashed a decision of an inferior authority, which was without jurisdiction, even though appeal was incompetent.

The power would not be exercised by the High Court to substitute its own judgment whether on a question of a factor how, in place of that of the Subordinate Courts or to correct an error not being an error of law apparent on the face of the record.

In the exercise jurisdiction under Art. 227, the High Court can set aside or ignore the findings of facts of an inferior Court Tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possible have come to the conclusion which the Court of Tribunal has come to, or, in other words, it is a finding which was perverse in law. Except to this limited extent, the High Court has no jurisdiction to interfere with the findings of fact.

This means that the High Court can interfere, under Art. 227, in cases of –
(a) Erroneous assumption or excess of jurisdiction.
(b) Refusal to exercise jurisdiction.
(c) Error of law apparent on the face of the record, as distinguished from a mere mistake of law or error of law relating to jurisdiction.
(d) Violation of the principles of natural justice.
Article 228. **Transfer of certain cases to High Court:** If the High Court is satisfied that a case pending in a court subordination of which in necessary for the disposal of the case, it shall withdraw the case and may

(a) Either dispose of the case itself, or

(b) Determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

**Jurisdiction over Tribunals**

The High Court may quash the order or decision of an inferior Tribunal on the following grounds.

(a) That the impugned order or decision is without jurisdiction, or against the principles of natural justice, or involves non-exercise of jurisdiction or a grave dereliction of duty or flagrant violation of the law as distinguished from a merely erroneous decision of fact or law or patent irregularity in procedure or an error of law apparent on the face of the record, or that the finding is ‘perverse’, being founded on no material whatever.

(b) That the exercise of the jurisdiction under Art. 227 does not amount to exercising the power of appeal or revision on question of act or of law, not affecting jurisdiction.

On the other hand, the power under Art. 227 will not be exercised in cases, like the following:

i) Where the only question involved is one of interpretation of a deed.

ii) On questions of admission or rejection of a particular piece of evidence, even though the question may be of every day recurrence.

iii) To correct an erroneous exercise of jurisdiction, as a Court of revision.

iv) To set aside an ultra-vires finding of fact, except where it is founded on no material whatsoever or perverse.

v) To correct an error of law, not being an error apparent on the face of the record.

vi) To interfere with the ultra-vires exercise of a discretionary power unless it is violative of the principles of natural justice.

vii) To interfere with the decision of an Industrial Court on a merely technical ground which would not advance substantial social justice.

**Article 165. The Advocate-General for the States**

1. The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.

2. It shall be the duty of the Advocate-General to give advice to the government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or...
assigned to him by the Governor, and to discharge the functions
conferred on him by or under this Constitution or any other law for the
time being in force.

3. The Advocate-General shall hold office during the pleasure of the
Governor, and shall receive such remuneration as the Governor may
determine.

Procedure before High Court

After filing the application in the High Court, the same is listed before the
Hon’ble Judge for consideration. After considering the matter, the Hon’ble Judge may
either issue notice to the respondents or dismiss the petition itself. If the notice is
issued, then the respondents are required to be served by the petitioner and the
respondents are required to file their reply to the petition. The reply prepared is
required to be vetted by the Law Ministry and then is handed over to the Counsel for
Government for filing in the Court. Thereafter the petitioner can file the rejoinder to
the reply of the Govt. after completion of these formalities e.g. completion
of pleadings, the matter is argued before the Hon’ble judge who after hearing the
arguments on both the sides passes his order allowing the petition thereby granting
the relief claimed by the petitioner with certain directions to the parties. If the matter is
dismissed, the Govt. has nothing to do except to procure the certified copy of the
order. If the petition is either allowed or directions are issued to the Govt. then the
Govt. can either file a review application before the same bench or may file appeal
against the order before the Higher Court which may be the Division Bench of the
High Court or may be Supreme Court, as the case may be.

Contempt jurisdiction

The High Court has powers to punish for the contempt of its orders under
Article 215 of the Constitution of India read with Contempt of Court Act, 1971. the
Contempt of Court Act, 1971 defines the contempt of court in section 2(a) to mean civil
contempt or criminal contempt. The civil contempt has been defined in section 2 (b) to
mean willful disobedience to any judgment, decree, direction, order, writ or other
processes of a court or willful breach of undertaking given to a Court. In case of Civil
Contempt, the High Court has power to punish the contemnor with simple
imprisonment for a term which may extend to 6 months or with fine which may
extend to Rs. 2000/- or with both. However, the contemnor may be discharged or the
punishment ordered may be remitted on apology being made to the satisfaction of the
Court. The High Court has got powers to punish contemnor for the contempt
committed of the orders passed by the subordinate Courts.

THE SUPREME COURT OF INDIA

INTRODUCTION

The Supreme Court is at the apex of the Indian judiciary. It has a Chief Justice
and 25 other judges. The number of judges can be changed by the Parliament. The
President appoints the Chief Justice of India and other judges. The President consults
other judges of the Supreme Court and High Courts while making these
appointments. In case of the appointment of other judges, the Chief Justice is always consulted.

FUNCTIONS

The Supreme Court of India, being the highest court in the Country, has to perform judicial, administrative, advisory and other functions.

The judicial functions of the Supreme Court are both of the original as well as of appellate nature. Original jurisdiction means the authority to hear certain cases directly for the first time. The Supreme Court of India has original jurisdiction over certain cases such as:

- Interpretation of the Constitution
- Center – State Disputes
- Cases relating to infringement, abridging or denying of the Fundamental Rights guaranteed by the Constitution
- Disputes between two or more States.

The Supreme Court has power to grant special leave to appeal against the judgments delivered by any court in the country. The cases that can be brought before the Supreme Court, through an appeal, from the appellate jurisdiction of the court are Criminal Cases, Civil Suits and Constitutional Matters. It is custodian of the constitution as such it is the duty of the Supreme Court to uphold the sanctity of the Constitution. It can review a Central or State law to establish its legality or otherwise. If the Parliament passes any law that is against the Constitution, the Supreme Court can declare that law as unconstitutional. It acts as the guardian of the Fundamental Rights of the citizens of India. It protects the Fundamental Rights from being eroded, abridged or infringed upon by any person, group of persons or the State itself. It can issue writs to the offending party/parties.

Another very important function of the Supreme Court of India is its obligation to advise on constitutional as well as other matters of law, legislature, the President or the Council of Ministers, whoever seeks it. The Supreme Court acts as the Court of Record also.

Articles 124 to 147 of the constitution of India deal with the powers & functioning of the Supreme Court, appointment/removal of judges, etc.

Article 124: Establishment and Constitution of Supreme Court:-

The Supreme Court of India is the highest Court in India. It consist of a Chief Justice of India and until Parliament by law prescribes a larger number, of not more than twenty-five other judges.

Article 131. Original jurisdiction of the Supreme Court:- Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute-

(a) Between the government of India and one or more States; or
(b) The Government of India and any State or States on one side and one or more other States on the other, or
(c) Between two or more states, if and in so far as the dispute involves any question (whether of law of fact) on which the existence or extent of a legal right depends;

**Article 132. Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases:**

An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under Art 134 A that the case involves a substantial question of law as to the interpretation of this Constitution.

**Article 133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.**

An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India.

(a) That the case involves a substantial question of law as to the interpretation of this Constitution.
(b) That the opinion of the High Court the said question needs to be decided by the Supreme Court.

**Article 136: Special Leave to appeal by the Supreme Court:**

(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or Tribunal in the territory of India.
(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

[Article 136 of the Constitution of India provides that the Supreme Court may, in its discretion, grant special leave to appeal from any judgment order without receiving certificate of the High Court.]

Article 136 confers a wide discretion on the Supreme Court to entertain an appeal in suitable cases not otherwise provided for by the Constitution. However this Article of the Constitution does not confer a right of appeal to any party but it confers a discretionary power on the Supreme Court to grant special leave to appeal from the order of any court of Tribunal. The grounds on which the Supreme Court would normally interfere with decisions arrived at by Tribunals can be classified under the following categories.

**Article 139 A. Transfer of certain cases**

1. Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Court or before two or more High Court and the Supreme Court is satisfied on its own motion or an
application made by the Attorney-General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Court and dispose of all the cases itself;

Provided that the Supreme Court may after determining the said question of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt there of, proceed to dispose of the case in conformity with such judgment.

2. The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court.

**Article 141. Law declared by Supreme Court to be binding on all court:-** The law declared by the Supreme Court shall be binding on all courts within the territory of India.

**Supreme Court makes law by decisions**

The Court under Article 141 of the constitution is enjoined to declare to declare law. The law declared by the Supreme Court is the law of the land [ DTC Vs DTC Mazdoor, (1999) Supp. (1) SCC 600 (Para 134 CB.)]

'Law declared': In case of conflict between decisions of the Supreme Court itself, it is the latest pronouncement, which will be binding upon the inferior Court, unless the earlier was of a larger Bench. If the later decision is that of a larger Bench, the previous decision will be deemed to have been overruled and completely wiped out.

**Article 76. Attorney- General of India**

1. The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney General for India.
2. It shall be the Attorney General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge to functions conferred on him by or under this Constitution or any other law for the time being in force.
3. In the performance of his duties the Attorney General shall have right of audience in all courts in the territory of India.
4. The Attorney General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

**Procedure before Supreme Court**

When a case is filed before the Supreme Court, the same is listed before the Hon' ble Judges. The Hon' ble Judges may either issue notice or admit the case for consideration or reject the same. If either notice is issued or case is admitted for consideration, the respondents are required to be served by issuing a notice to them.
Thereafter, the respondents can file the respective replies, within the time limit granted by the Supreme Court to which the petitioner can file its rejoinders. Thereafter, the matter is considered by the Hon’ble Supreme Court and the matter may either be dismissed or allowed or directions may be issued. It may be noted that against the orders passed by the Supreme Court, no appeal can be filed and the orders are binding on all the authorities within the territory of India and are to be followed and observed.

Like the High Court, the Supreme Court also has the powers to punish a condemner for the contempt of its orders committed by that person.
Chapter 8

MINISTRY OF LAW AND JUSTICE

Introduction

The Ministry of Law and Justice is the oldest limb of the Government of India dating back to 1833 when the Chapter Act 1833 was enacted by the British Parliament. The said Act vested for the first time legislative power in a single authority, namely the Governor General in Council. By virtue of this authority and the authority vested under him under Section 22 of the Indian Councils Act 1861, the Governor General in Council enacted laws for the country from 1834 to 1920. After the commencement of the Government of India Act 1919, the legislative power was exercised by the Indian Legislature constituted there passing of the Indian Independence Act 1947 India became a Dominion and the Dominion Legislature made laws from 1947 to 1949 under the provisions of Section 100 of the Government of India Act 1935 as adapted by the India (Provisional Constitution) Order 1947. Under the Constitution on India, which came into force on the 26th January 1950, the legislative power is vested in Parliament.

Composition of Ministry

The Ministry of Law and Justice comprises of the Legislative Department and the Department of Legal Affairs. The Department of Legal Affairs is concerned with advising various Ministries of the Central Government while the Legislative Department is concerned with drafting of principal legislation for the Central Government.

Department of Legal Affairs

The Department of Legal Affairs renders advice to various Ministries of the Government of India on legal matters, carries out conveyancing work on their behalf, and attends to litigation work of the Central Government in Supreme Court, various High Courts and some of the subordinate courts. This Department is also concerned with entering into treaties and agreements with foreign Governments in matters of civil law, authorizing officers of the Central Government to execute contracts and assurance of property on behalf of the President, and authorizing officers to sign and verify plaints, written statements in suits by or against the Government. It is further concerned with the appointment of the Law Officers, namely, Attorney General, Solicitor General and Additional Solicitors General. This Department administers the Advocates Act, 1961, the Notaries Act, 1952 and the Legal Services Authorities Act, 1987. Department of Legal Affairs is also administratively in charge of Income Tax Appellate Tribunal (ITAT), Indian Legal Service and Law Commission of India.

This Department has a two tier organizational set-up, i.e. the Main Secretariat at New Delhi and Branch Secretariats at Bangalore, Kolkata, Chennai and Mumbai. The set-up at main Secretariat includes the Secretary, Additional Secretaries, Legal Adviser (Conveyancing), Joint Secretary & Legal Advisers and other Legal Advisers at various levels. The work relating to legal advice and conveyancing have been distributed amongst the Group of officers. Each Group is normally headed by a Joint
Secretary & Legal Adviser who is assisted by a number of Legal Advisers at different levels.

The litigation work in Supreme Court on behalf of the Ministries of the Government of India and Union Territories is handled by the Central Agency Section headed by a Joint Secretary and Legal Adviser. The litigation work in Delhi High Court is processed by Litigation (High Court) Section.

This Department has a special Cell dealing with the implementation of the recommendations of Law Commission. This Cell also administers the Advocates Act.

Advice work

This Department promptly attends to advice matters received from various Ministries / Departments. If a case involves a very important or intricate questions of law, opinion of one of the Law Officers is also taken in the matter.

Litigation work

For the purpose of conduct of Government litigation, this Department prepares panels of Advocates based on their experience. Advocates from these panels are engaged to represent the Government in the cases. In important matters before the Supreme Court and High Courts, one of the Law Officers is also engaged and made in charge of the particular case. For better conduct of litigation work, this Department has set up its Branch Secretariats at Bangalore, Kolkata, Chennai and Mumbai. Of late a special Cell has been created in this Department to monitor the performance of Government Lawyers. This Cell is headed by an Additional Secretary.

Conveyancing:

Conveyancing is the law and practice of effecting property transactions and of contracts. Conveyancing is a system of documentation relating to transactions of properties movable or immovable as well as contracts. It can be described as an 'art of creating, transferring and extinguishing interests in properties'. It can also be described as a methodical system of drafting documents in accordance with the law relating to the transactions, which the document represents, or records. Every document relating to property or other commercial transactions has to be based on the law relating thereto, otherwise the document may prove to be illegal or ineffective and so also the transaction represented by it. That is where conveyancing comes and becomes a branch of legal system and practice. The advantage of conveyancing is that if documentation is made systematically and meticulously it would put every transaction embodied in it in its proper perspective. It would save lot of disputes between the parties and their successors and consequently it would save a lot of litigation.

Legal Aid:

Providing legal aid to the poor and the weaker sections of the society is one of the Directive Principles of State Policy. The Legal Services Authorities Act, 1987 provides for Constitution of Legal Service Authorities. These bodies have the responsibilities of providing free and competent legal services to the weaker sections.
of the society and to organise Lok Adalats. This Act has put Lok Adalats on a statutory footing. All the provisions of the Act have been extended to all the State and Union Territories. The Legal Aid Programme is monitored by the National Legal Services Authority (NALSA) which is headed by the Chief Justice of India

Legal Profession

The Advocates Act, 1961 has consolidated the law relating to legal practitioners. It also provides for constitution of State Bar Councils and the Bar Council of India. State Bar Councils mainly admit persons as advocates on their rolls and deal with cases of misconduct against advocates. The Bar Council of India lays down the standard of professional conduct and etiquette for advocates. The Bar Council of India also recognises the law degrees of various Universities. For this purpose, it conducts visits and inspections of those Universities.

Responsibility of Central Government Counsel (CGSC):

(i) The Counsel shall appear in Courts for which he has been empanelled by the Ministry of Law & Justice, Department of Legal Affairs, New Delhi.
(ii) If so required, the CGSC will appear in the District & Subordinate Courts, Tribunals, Commissions of Inquiry before the Arbitrators/Umpires, etc. at the Headquarters. He may also be required to appear in Courts, Tribunals, Commissions of Inquiry before the Arbitrators/Umpires, etc. outside the Headquarters.
(iii) When any case attended to by him is decided against the Government of India and/or its Officer he will give his opinion regarding the advisability of filing an appeal from such a decision.
(iv) He will render all assistance to the Law Officers, Advocate General of the State Government, Special or Senior Counsel, if required to do so, who may be engaged in a particular case before the High Court, Tribunals, Commissions of Inquiry, before the Arbitrators/Umpires, etc.
(v) He will keep the Department concerned informed of the important developments in the case from time to time, particularly with regard to drafting, filing of papers, dates of hearing of the case, supplying copies of judgments, etc.
(vi) He will perform such other duties of a legal nature, which may be assigned to him by the Department of Legal Affairs, Ministry of Law & Justice, Ministry of Company Affairs, from time to time.

Neglect of duty by CGSC:

When the CGSC is not performing his duties sincerely an to the satisfaction of the Department i.e. the respondents, then the Department can bring the matter to the notice of the Ministry of Law & Justice. The matter can also be reported to the Bar Council of the concerned States for action against the advocate.

Arbitration work:

This Department also handles arbitration matters concerning various Departments/Ministries. Officers in DGS&D and CPWD are also posted by Deptt. of Legal Affairs, who act as Arbitrators in disputes with suppliers/contractors. An officer in the rank of Joint Secretary & Legal Adviser is posted in Permanent Machinery of
Arbitration in Department of Public Enterprises. Besides, Law Secretary nominates Arbitrators in disputes where the Arbitration Clause provides for the same.

Engagement of Counsel and payment of fees:

The Ministry of Law & Justice issues various orders in regard to engagement of counsel and payment of fees from time to time.
Chapter 9

CAVEAT

Introduction

Sometimes a party obtains an ex-parte order on an application without informing the other party of his intentions to make such an application. Under the CPC (Amendment) Act. 1976 by incorporating Section 148A, the party willing to prevent such an ex-parte order being passed, has been given a right to intimate the court of his intention to have notice of an intended application by the adverse party by lodging a caveat. A caveat is a caution or warning giving notice to the court not to issue any grant or take any step without notice being given to the party lodging the caveat. It is a precautionary measure which is generally taken against the grant of interim order by the courts. The person who lodges a caveat is entitled to be heard before an order against him can be passed by the court.

Section 148A of the Code of Civil Procedure deals with the right to lodge a caveat. The provision is reproduced below:

148A. Right to lodge a caveat-

(1) Where an application is expected to be made, or has been made in a suit or proceeding instituted, or about to be instituted, in a Court, any person claiming a right to appear before on the hearing of such application may lodge a caveat in respect thereof.

(2) Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledgment due, on the person by whom the application has been, or is expected to be, made, under sub-section (1).

(3) Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the Court, shall serve a notice of the application on the caveator.

(4) Where, a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator at the caveator's expense, with a copy of the application made by him and also with copies of any paper of document which has been, or may be, filed by him in support of the application.

(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (1) has been made before the expiry of the said period.
Chapter 10

ASSISTANCE TO GOVERNMENT SERVANTS IN LEGAL PROCEEDINGS

1. **Matter unconnected with official duties**-

   Government will not give any assistance to a Government servant or reimburse the expenditure incurred by him in the conduct of proceedings in respect of matters not of, or connected with, his official duties or his official position, irrespective of whether the proceeding were instituted by a private party against the Government servant or vice-versa.

2. **Matters connected with official duties**-

   Government assistance will, however, be admissible in the conduct of legal proceedings instituted against him or by him regarding matters connected with his official positions or duties, to the following extent:-

   (i) **Cases filed by Government against the Government servant** - No assistance is admissible in such proceedings civil or criminal. In case the proceedings conclude in the employee's favour, reimbursement of the whole or any reasonable proportion of the expenses will be considered by the Government, if it is satisfied that he was subjected to the strain of the proceedings without proper justification.

   (ii) **Cases filed by private parties against the Government servant** - If it is considered in public interest that government itself should arrange for the conduct of the proceedings, it may do so, on the Government servant agreed to it. Otherwise, reimbursement to the Government servant of reasonable cost incurred by him in conducting his Defence will be considered by the Government, not merely if the proceedings conclude in his favour but on consideration how far the court has vindicated the acts of Government servant. An interest-free advance of Rs. 500/- and advance from his GPF are, however, admissible for the purpose of his defence.

   (iii) **Cases filed by a Government servant on his being required to vindicate his official conduct** - Interest-free advance will be sanctioned to him for the purpose. The extent of reimbursement by the Government will be decided considering to what extent the Court has vindicated the acts of the Govt. servant in the proceedings.

   (iv) **Cases filed by Government servant to vindicate his conduct requiring prior sanction of Government** - In deserving cases Government will sanction interest-free advance for the conduct of proceedings; but no part of the expenses will be reimbursed by the Government even if the Government servant succeeds in the proceedings. If permission sought for is not refused within 3 months, the government servant is free to assume that the permission sought for has been granted.
(v) In a civil suit where both the government servant and the government are impleaded - The Government servant for his liability to damages for negligence in discharges of official duties of civil nature and the Government for its vicarious liability - If the deviance is substantially the same for both - Government will arrange for its employee's defence also.

(vi) Cases filed against the Government servant by another Government servant in respect of matters connected with former's official position/duties - same as at item (ii) above. This will not apply if he is impleaded as co-respondent in suits against the Government in regard to conditions of service, seniority, etc.
Chapter 11

PRODUCTION OF UNPUBLISHED OFFICIAL RECORDS AS EVIDENCE IN COURTS

Procedure to be followed when a Government servant is summoned by a Court to produce official documents for the purpose of giving evidence.

The law relating to the production of unpublished official records as evidence in courts is contained in section 123, 124 and 162 of the Indian Evidence Act, 1872 (Act I of 1872), which are reproduced below:

"123. No one shall be permitted to give any evidence derived from unpublished official at the Head of the Department concerned, who shall give or withhold such permission as he thinks fit.

124. No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interest would suffer by the disclosures.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to court notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the court".

The court, if it sees fit, may inspect the document, unless it refers to matters of State, or, take other evidence to enable to it determine on its admissibility.

Translation of a document:- If for such a purpose it is necessary to cause any document to be translated, the court may if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence; and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.

2. For the purpose of section 123 above, the expression "officer at the Head of the department concerned " may be held to mean the officer who is in control of the department and in whose charge records of the department remain. Ordinarily such an officer would be Secretary to the State Government in the cases of State Government and the secretary, Additional Secretary or Joint Secretary in charge of Ministry in the case of the Government of India. But in case of attached offices like Directorates, the Director General may be regarded as "the Head of the Department" for the purpose of this Section. Only such an officer should be treated as the authority to withhold or give the necessary permission for the production of official documents, in evidence. In case of part C States the Chief Commissioner or the Lt Governor, as the case may be, regarded as the Head of the Department and not his Secretaries.

3. In respect of documents:-- (1) emanating from a higher authority, i.e. the Government of India, or the State Government, or which have formed the subject of correspondence with such higher authority, or
(2) emanating from other Government, whether foreign all members of the Commonwealth, the Head of Department should obtain the consent of the Government of India or of the State Government, as the case may be, through the
usual official channel before giving permission to produce the documents in court, or giving evidence based on them unless the papers are intended for publication or are of a purely formal or routine nature, when a reference to a higher authority may be dispensed with.

4. In the case of document other than those specified in paragraph 3 above, production of documents should be withheld only when the public interest would by their disclosure be injured, or where the practice of keeping a class of documents secret is necessary for the proper functioning of the public service. Some High courts have pointed out the circumstances under which no such privilege should be claimed, e.g., privilege is not to be claimed on the near ground that the documents are State documents or are official or are mark confidential, or if produced, would result in parliamentary discussion or public criticism or would expose want of efficiency in the administration or tend to lay a particular department does not wish the documents to be produced is not adequate justification for objecting to their production. The High Courts have also observed that refusal to produce documents relating to affairs of State implies that their production will be prejudicial to public interest. Consequently the reasons therefore should be given in administration affidavit Form 1 at the appropriate place.

5. In a case of doubt the Head of Departments should invariably refer to higher authority for orders.

6. These instruction apply equally to cases in which Government is a party to the suit. In such cases, which will depend on the legal advice as to the value of the documents, but before they were produced in court, the considerations stated above must be borne in mind, and reference to higher authority made, when necessary.

6-A. A Government servant other that the Head of Department who is summoned to produce an official document should first determine whether the documents is in his custody and he is in a position to produce it. In this connection, it may be stated that all official records are normally in the custody of the Head of Department and it is only under special circumstances that administration official documents can be said to be in the custody of administration individual Government servant. If the document is not in the custody of the Government servant summoned he should inform the court accordingly. If, under any special circumstances, the documents is in the custody of the Government servant summoned, he should next determine whether the document is administration unpublished official record relating to affairs of State and privilege under section 123 should be claimed in respect of it. If he is of the view that such privilege should be claimed or if he is doubtful of the position, he should refer the matter to the Head of the Department, who will issue necessary instructions and will also furnish the affidavit in Form no. 1 in suitable cases. If the document is such that privilege under section 123 could not be claimed but if the Government servant considers that the document is a communication made to him in official confidence and that the public interest would suffer by its disclosure, he should claim privilege under section 124 in Form 11. In case of doubt, he should seek the advice of the Head of the Department. The expression "Head of the Department" used in this paragraph will have the same meaning as the expression" Head of the Department" in paragraph 2 above.
7. The Government servant who is to attend a court as a witness with official document should, where permission under section 123 had been withheld, be given administration affidavit in Form no. 1 duly signed by the Head of the Department in the accompanying form. He should produce it when he is called upon to give his evidence, and should explain that he is not at liberty to produce the documents before the court, or to give any evidence derived from them. He should, however, take with him the papers which he has been summoned to produce.

8. The Government servant who is summoned to produce official document in respect of which privilege under section 124 has to be claimed, will make administration affidavit in the accompanying Form no. II when he is not attending the court himself to give evidence. He shall have sent it to the court along with the documents. The person through whom the documents are sent to court should take with him the documents which he has been called upon to produce but should not hand them over to the court unless the court directs him to do so. They should not be shown to the opposite party.

9. The Head of the Department should abstain from entering into correspondence with the presiding officer of the court concerned in regard to the grounds on which the documents have been called for. He should obey the court's orders and should appear personally, or arrange for the appearance of another officer in the court concerned, with the documents, and act as indicated in paragraph 7 above, and produce the necessary affidavit if he claims privilege.
Chapter 12

PAYMENT OF CHARGED EXPENDITURE

What is Charge expenditure?

In terms of Article 112 (1) of the Constitution of India, a statement of estimated receipts and expenditure of the Government of India is presented to the Parliament every year. Article 112 (2) provides that the estimate of expenditure embodied in this 'annual financial statement', or Budget, shall show separately:

(a) The sums required to meet the expenditure described by the Constitution as expenditure charged upon the Consolidated Fund of India; and
(b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of India.

The types of expenditure that are charged on the Consolidated Fund of India are enumerated in Article 112 (3) as follows:

a) The emoluments and allowances of the President and the expenditure relating his office;
b) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of People.
c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges and other expenditure related to loans and the service and redemption of debt;
d) (i) the salaries of allowances and pensions payable to or in respect of Judges of the Supreme Court;
(ii) the pensions payable to or in respect of Judges of the Federal Court;
(iii) The pensions payable to or in respect of judges of any High Court which exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of the Constitution exercised jurisdiction in relation to any are included in a Governor’s Province of the Dominion of India;
e) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor General of India;
f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;
g) any other expenditure declared by the Constitution or by Parliament by law to be so charged.

So what basically distinguishes the expenditure charged on the Consolidated Fund of India from other expenditure? The answer is to be found in Article 113, which provides that while that portion of the estimates which relates to expenditure charged upon the Consolidated Fund of India can be discussed in either House of the Parliament, it is not subject to vote, unlike the other expenditure included in the estimates, which is not only open to discussion but also subject to vote. In other words, the Parliament can approve with or without any reduction or refuse to approve any estimate relating to 'other expenditure' but it can not do so in the case of 'charged expenditure'. In a way, the 'charged expenditure' is in the nature of the supreme form of obligatory expenses of the Government.
This brings us to the second question, which is, as to what type of 'charged expenditure' are we concerned with? It will be obvious from the list of types of expenditure given in para 2 above that the only type of charged expenditure that we are concerned with is the expenditure on account of any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal as provided for in Article 112 (3) (f). While this is self-explanatory, it may be useful to refer to Notes 1 & 2 below para 249 and para 250 to 255 of Chapter 18 of the Defence Accounts Code to understand which specific forms of payments are to be treated as charged expenditure.

What needs to be remembered at all times is that, as a general rule, any payment required to be made in satisfaction of any judgment, decree or award of any court or arbitral tribunal is to be treated as 'charged expenditure'. For further nuances of what would constitute charged expenditure and what would not, Chapter 18 of the Defence Accounts Code can be consulted.

Provisions contained in Defence Account Code

249. In accordance with Article 112 (3) (f) of the Constitution of India, payments made in satisfaction of a judgment, decree or award of any court or arbitral tribunal will be treated as expenditure "Charged" on the Consolidated Fund of India. The character of the "Charged" expenditure lies in the fact that the estimates relating to such expenditure are not submitted to the Vote of Parliament, although it has right of discussion of such estimates.

The under mentioned items of expenditure are also treated as "Charged" on the Consolidated Fund of India.

(i) Interest charges on Fund balances.
(ii) Loan for Water Supply Programmes to State Govt.

Note1:- Payments made in satisfaction of arbitration awards can be divided into two broad categories. The first class consists of awards, which directs payment of money by one party to the other. The second class consists of awards, which merely declare the rights of the parties or the correct interpretation of particular provisions without containing any consequential directions to make payments, etc. The former type of award is called "executory award" the latter is called "declaratory award". It is only in the case of "executory awards" that amounts are required to be paid to satisfy the same and only in such cases the provisions of Article 112 (3) (f) of Constitution will be attracted. Declaratory awards are not executable as such and hence no sum can be said to be required to satisfy the same.

Note 2:- An arbitrator appointed under Section 10A of the Industrial Disputes Act 1947 as a private arbitrator to whom a dispute is referred under an arbitration agreement under the Arbitration Act, 1940, is not a "tribunal" within the meaning of Article 136 of the Constitution since such an appointment is not made by the State but merely, by an agreement of the parties and the State’s inherent judicial powers or the trappings of a court are not vested in the Arbitrator and consequently any payment made in satisfaction of the award of such an "arbitrator" cannot be treated as expenditure "Charged" on the Consolidated Fund of India. However, in cases where the award made by a private arbitrator is filed in a Court and a decree is obtained in terms of the
award, the expenditure required to satisfy the decree of the court will be expenditure "Charged" on the consolidated Fund of India as contemplated in Article 112(3)(f) ibid.

250. Awards under the Workmen's Compensation Act of 1923 and awards involving refunds of Revenue and Security Deposits lodged by the Contractors, etc. and held in "Public Account" would not, however, attract the provisions of Article 112 (3) (f) of the Constitution. However, the payments made in satisfaction of the awards given by the competent authority under the Payment of Wages Act 1936 will be treated as "charged" since the authority appointed under the Payment of Wages Act has the trappings of a Civil Court and inquiries made by it are in the nature of judicial proceedings and the amount to be paid by the competent authorities under the Act is recoverable as a fine imposed by a Magistrate.

251. In case a contractor delayed receiving payment due to him, because of a dispute and the amount was transferred to the head "Deposits" and subsequently if he obtained a decree from a court for a larger amount than held under the Deposit the entire amount due for payment is to be treated as "Charged" irrespective of the fact that part of the amount might have been voted and held under Deposit. Cases of refunds of "Revenue" and "Security Deposits" under the orders of the Court, etc. will be dealt with in the normal manner by compiling such payments either by deduction from the Receipts Heads of accounts to which the amounts were originally credited or by debiting the "Public Account" as the case may be.

In case the security deposit of a contractor is appropriated to Govt. towards liquidated damages and where the case goes into arbitration resulting in award of refund to the contractor, such refunds are to be treated as "Charged" expenditure.

252. The payment of the final bill amount held under the Head "T-Deposits and Advances Part-II Deposits not bearing interest - Miscellaneous Deposits" in the Public Account under the provisions of para 413 Regulations for the M.E.S. will be treated as "Charged" expenditure, if the terms of the decree/Arbitration award specifically include the payment of such amount. In such cases at the time of making payment of the final bill it would be necessary to reverse the original adjustment entries with reference to amount of the final bill (but excluding refund of security Deposit and other recoveries if any which were initially adjusted under "Receipt" Heads vide para 252) would be treated as "Charged" expenditure and dealt with accordingly.

253. Where a payment made into the Court is in the nature of a security for staying the execution of the decree, the same would be treated as a "Deposit" and debited to the head Sector "K" - Deposits and Advances- Part-IV- Suspense-Suspense Accounts" in the "Public Account" in the absence of any stay of execution of the decree, the payments made would be "Charged" on the Consolidated Fund of India. The clearance of amount from the "Suspense" by debit to the appropriate service head of account as a "Charged" expenditure will be effected after the requisite funds are allotted by the Ministry of Defence (See para 256).

254. (a) Cost of stamp paper when required to be paid by the Government in terms of decree/arbitration award, will be treated as "Charged" expenditure.
(b) Any expenditure incurred by the Government prior to the announcement of the decree/award either on legal expenses (including lawyer's fees and other
incidental expenses), or on stamp paper will not be treated as "Charged", for the reason that at the time the expenditure is incurred there is no judgment /decree/award and accordingly, the expenditure cannot be held to have been incurred in satisfaction of a judgment, etc. The general proposition that expenditure incurred prior to the judgment, etc. cannot constitute "Charged" expenditure, does not, however, hold good in respect of expenses incurred by the opposite party prior to the judgement, etc. If the judgement, etc., when pronounced, contains a direction that the whole or a part of such expenses will be payable by Government to the opposite party. In such cases, the payments being in satisfaction of judgment, decree or award, will require to be treated as "Charged" expenditure in terms of Article 112(3)(f) of the Constitution.

Note:- In certain cases stamp paper is purchased by the Arbitrator (instead of being supplied by Government) who claims payment at a later date. In such cases, if the award contains a direction that the value of stamp paper will be borne by Government, re-imbursement of such value to the Arbitrator will constitute "Charged" expenditure provided it is made in accordance with the terms of, and subsequent to the award.

**Satisfaction of Decrees/Arbitral Awards in Respect of Compensation for Requisition or Acquisition of Properties for Defence**

255. (a) Where the decree/award is not directly against the Union of India, but is against the State Government, that same will be initially satisfied by the State Government, who will raise debits for the amount paid through the A.G. concerned in the normal manner. No allotment of funds in such cases is necessary from the Central Government budget under "Charged" expenditure.

(b) Where the decree/award is directly against the Union of India, the payment to be made in satisfaction thereof is treated as "Charged" on the Consolidated Fund of India. Prior allotment of funds, will, therefore, be obtained before payments in satisfaction of such decrees/awards are made.

(c) The payment made in satisfaction of the award of Central Administrative Tribunals (constituted under the Administrative Tribunal Act 1985) should be treated as expenditure "Charged" on the Consolidated Fund of India within the purview of Article 112 (3)(f) of the Constitution. Where, however, the CAT grants a Government servant some relief, such arrears paid to satisfy the judgment will constitute expenditure "Charged" on the Consolidated Fund of India. The subsequent salary will be deemed to be governed by the normal rules of Government relating to pay scales, increment, etc. of Government employees and hence will not constitute "Charged" expenditure but will be treated as "Voted" expenditure as usual.

(d) Where the court decrees payment of rent, at a higher rate from a retrospective date, the arrear payment of higher rent to satisfy the decree will be treated as "Charged Expenditure". Where the agreements are modified or revised after the court decree by mutual consent of the parties concerned, the subsequent recurring payments will be treated as "Voted" expenditure in general, when made in pursuance of fresh agreement.
Chapter 13

SUMMONING OF CIVILAN WITNESS AND DOCUMENTS BY COURT MARTIALS AND COURT OF INQUIRIES

The question whether officials of Defence Accounts Department can be summoned as witnesses by the Convening Officer or Presiding Officer of Courts of Inquiry under Army Act, 1950 was examined. The legal advice received in this regard is reproduced below:

Section 135 of the Army Act 1950 was amended by Act 37 of 1992 w.e.f. 6.6.1992 vide which word 'or Court of Inquiry' was added. For the sake of convenience, Section 135 is being reproduced as under:-

135 Summoning witnesses: (1) The Convening Officer, the Presiding Officer of a court-martial (or court of inquiry), the judge - advocate or the Commanding Officer of the accused person may, by summons under his hand, require the attendance, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any documents or other thing.

That the bare reading of the said Section shows that the Convening Officer or Presiding Officer of Court of Inquiry may, by summons, under his hand, require the attendance of any person either to give evidence or to produce any document or other thing.

A careful reading of the said Act will show that the word 'any person' used in Section 135 is not meant any person other than what has been defined in Section 2 of the said Act. For the sake of convenience, Section 2, which deals with person subject to Army Act. is being reproduced as under:-

2. Persons subject to this Act-(1) The following person shall be subject to this Act wherever they may be, namely:-
   (a) officers, junior commissioned officers and warrant officers of the regular Army.
   (b) persons enrolled under this Act:
   (c) persons belonging to the Indian Reserve Forces;
   (d) persons belonging to the Indian Supplementary Reserve Forces when called out for service or when carrying out the annual test;
   (e) officers of the Territorial Army, when doing duty and enrolled person of the said Army when called out or embodied or attached to any regular forces, subject to such adaptations and modifications as may be made in the application of this Act to such persons under subsection (1) of section 9 of the Territorial Army Act, 1984 (56 of 1948);
   (f) persons holding commissions in the Army in India Reserve of Officers, when ordered on any duty or service for which they are liable as member of such reserve forces;
   (g) officer appointed to the Indian Regular Reserve of Officers, when ordered on any duty or service for which they are liable as member of such reserve forces.

That the civilians or officers of other cadre or any category, which is not included in the definition of the persons subject to Army Act, cannot be summoned by Convening Officer or Presiding Officer of Court of Inquiry.
Consequently, in view of Section 2 of the Army Act, 1950, officers of CGDA are not covered under the definition of 'persons' who are subject to Army Act and thus, cannot be summoned as witness. As far as the Air Force Act and the Navy Act are concerned, in these Acts, no amendment has been done as such, under the Section where summoning powers have been given to Court of Inquiry.
Chapter 14

CONTEMPT OF COURTS

Parties to the proceedings.- The party who presents the petition shall be described as the "Petitioner" and the alleged contemnor shall be described as the "Respondent".

Contents of the petition.- The petition shall set out the following particulars:

(a) Name (including as far as possible the name of the father/ mother/ husband, age). Occupation and address of:
(i) the petitioner, and
(ii) the respondent.

If the alleged contemnor is an officer, he shall be described by name and designation.

(b) provision of the Act invoked and the nature of the contempt. "Civil or" Criminal:

(c) the grounds and material facts constituting the alleged contempt including the date of alleged contempt, divided into paragraphs numbered consecutively, along with supporting documents or certified/Photostat (attested) copies of the originals thereof:

(d) the nature of the order sought from the Tribunal:

(e) if a petition has previously been made by him on the same facts the details, particulars and the result thereof:

(f) the petition shall be supported by an affidavit verifying the facts relied upon except when the motion is by the Attorney-General or the Solicitor-General or the Additional Solicitor-General:

(g) every petition shall be signed by the petitioner and his Advocate, if any, and shall show the place and date:

(h) draft charges shall be enclosed in a separate sheet:

(i) in the case of "civil contempt" certified copy of the judgment, degree, order, writ or undertaking alleged to have been disobeyed shall be filed along with the petition:

(j) where the petitioner relies upon any other document(s) in his possession, or power, he shall file them along with the petition:

(i) in the case of "criminal contempt" of the Tribunal other than a contempt referred to in Sec. 14 of the Act, the petitioner shall state whether he has obtained the consent of the Attorney General or the Solicitor-General or the Additional Solicitor General and if so produce the same, if not the reasons thereof:

(ii) the petitioner shall file three complete sets of the petitions including the Annexures in paper book form, duly indexed and paginated. Where the number of respondents is more than one equal number of extra paper books shall be filed:

(iii) No fee shall be payable on a petition or any document filed in the proceedings.
Taking cognizance.- Every proceedings for contempt shall be dealt with by a Bench of not less than two members:

Provided where the contempt is alleged to have been committed in view of, presence or hearing of the Member(s), the same shall be dealt with by the Member(s) in accordance with Sec. 14 of the Act.

Initiation of proceedings.- (i) Every petition for "civil contempt" made in accordance with these rules shall be scrutinized by the Registrar, registered and numbered in the Registry and then placed before the Bench for preliminary hearing.

(ii) Every petition for "criminal contempt" made in accordance with these rules and every information other than a petition for initiating action for criminal contempt under the Act on being scrutinized by the Registrar shall first be placed on the administrative side before the Chairman in the case of the Principal Bench and the concerned Vice-Chairman in the case of other Benches or such other Member as may be designated by him for this purpose and he considers it expedient and proper to take action under the Act, the said petition or information shall be registered and numbered in the Registry and placed before the Bench for preliminary hearing.

(iii) When suo motu action is taken the statement of facts constituting the alleged contempt and copy of the draft charges shall be prepared and signed by the registrar before placing them for preliminary hearing.

Preliminary hearing and notice:-(i) The Bench if satisfied that a prima facie, case has been made out, may direct issue of notice to the respondent; otherwise, it shall dismiss the petition or drop the proceedings.

(ii) The notice shall be in Form No. 1 and shall be accompanied by a copy of the petition or information and Annexure if any, thereto.

(iii) Service of notice shall be effected in the manner specified in the Central Administrative Tribunal (Procedure) rules, 1987, or in such other manner as may be directed by the Bench.

Compelling attendance:-(i) The Tribunal may, if it has reason to believe, that the respondent is absconding or is otherwise evading service of notice, or has failed to appear in person in pursuance of the notice, direct a warrant, bailable or non-bailable, for his arrest, addressed to one or more police officers or may order attachment of property belonging to such person. The warrant and the writ of attachment shall be issued under the signature of the Registrar. The warrant shall be in Form No. 11 and shall be executed as for as may be, in the manner provided for execution of warrants under the Code.

(ii) The warrant shall be executed by the Officer of Officers to whom it is directed and may also be executed by any other Police Officer whose names is endorsed upon the warrant by the Officer to whom it is directed or endorsed.

(iii) Every person who is arrested and detained shall, if he cannot be produced before the Tribunal within twenty-four hours or arrest excluding the time necessary for the journey from the place of arrest to the Tribunal, be produced
before the nearest Magistrate within the said period, who may authorise detention till such person is produced before the Tribunal.

(iv) Every person who is arrested and detained when produced before the Tribunal, may be released on bail on a bond for such a sum of money as the Tribunal thinks sufficient with or without sureties, with the conditions that the person so released shall attend the Tribunal at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the Tribunal.

Provided that the Tribunal may, if it thinks fit, instead of taking bail from such person, release him on personal bond for his attendance. The provisions of the Code shall, so far as may be, apply to all arrests made and bonds executed under the Rules.

Appearance of the respondent.- Unless ordered otherwise by the Tribunal, whenever a notice is issued under these rules, the respondent shall appear in person in the case of "Criminal Contempt" and in person through an Advocate in the case of "Civil Contempt" at the time and place specified in the notice and continue to attend on subsequent dates to which the petition is posted.

Reply by the respondent.- The respondent may file his reply supported by an affidavit on or before the first date of hearing or within such extended time as may be granted by the Tribunal.

Right to be defended by an advocate.- Every person against whom proceedings are initiated under the Act, may as of right be defended by an advocate of his choice.

Hearing of the case and trial.- Upon consideration of the reply by the respondent and after hearing the parties :

(a) if the respondent has tendered an unconditional apology after admitting that he has committed the contempt, the Tribunal may proceed to pass such orders as it deems fit:

(b) if the respondent does not admit that he has committed contempt, the Tribunal may:

(i) if it is satisfied that there is a prima facie case, proceed to frame the charge in Form No. 111(subject to modification or addition by the Tribunal at any time ); or

(ii) drop the proceedings and discharge the respondent, if it is satisfied that there is no prima facie case, or that it is not expedient to proceed;

(c) the respondent shall be furnished with a copy of the charge framed, which shall be read over and explained to the respondent. The Tribunal shall then record his plea, if any;

(d) if the respondent pleads guilty, the Tribunal may adjudge him guilty and proceed to pass such sentence as it deems fit:

(e) if the respondent pleads not guilty, the case may be taken up for trial on the same day or posted to any subsequent date as may be directed by the Tribunal.

Assistance in the conduct of proceedings.- The Attorney-General/ Solicitor-General/Additional Solicitor-General, or any other Advocate as may be designated by
the Tribunal shall appear and assist the Tribunal in the conduct of the proceedings against the respondent.

Procedure for trial.- (i) Except as otherwise provided in the Act and these rules, the procedure prescribed for summary trials under Chapter XXI of the Code shall as far as practicable be followed in the trial of cases for contempt.

(ii) The Tribunal may, at its discretion, direct that evidence be produced in the form of affidavits.

(iii) The Tribunal may, either suo motu or on motion made for that purpose, order the attendance for cross-examination of a person whose affidavit has been filed in the matter.

(iv) The Tribunal, may at its discretion, direct any person to be examined as Tribunal witness,

(v) The Tribunal may make such order as it deems fit for the purpose of securing the attendance of any person to be examined as a witness and for discovery or production of any document.

Expenses of witnesses.- (i) Where any person is summoned by the Tribunal to appear as a witness in any proceedings under the Act. The expenses of such witness as may be determined by the Tribunal shall be borne by the party who has cited him as a witness.

(ii) Where the Tribunal summons any witness other than the witness cited by the parties, his expenses as determined by the Tribunal shall be paid by the Registrar from the funds for contingencies.

Execution of sentence- (i) If the respondent is found guilty and is sentenced to imprisonment other than imprisonment till rising of the Tribunal a warrant of commitment and detention shall be made out in Form No. IV under the signature of the Registrar. Every such warrant shall remain in force until it is executed or cancelled by order of the Tribunal. The Superintendent of jail specified in the order shall, in pursuance of the warrant detain the contemner in custody for the period specified therein subject to such further direction as the Tribunal may give.

(ii) When the Tribunal awards a sentence of fine and the fine amount is not paid at once or within such time as may be granted by the Tribunal, the Registrar shall take action in any one of the ways provided in Sec. 421 of the Code.

(iii) Warrants to be issued under sub-rule (ii) shall be in Form Nos. V and VI, as the case may be.

(iv) The report of the action taken by the Superintendent of the Jail or the Police Officer or District Collector to whom the warrant under sub-rule (iii) might have been addressed shall be filed in the records of the case.

Execution of Processes.- Process issued by the Tribunal shall, except as otherwise specifically provided, be executed by the Superintendent of the Police/Commissioner of Police, as the case may be.

Procedure on forfeiture of the Bond.- If any bond given for appearance of the respondent is forfeited due to his absence, the Tribunal may, after giving opportunity to the respondent or the surety, as the case may be, levy the whole or any part of the
amount mentioned in the surety bond, as penalty and direct the same to be recovered as if it were a fine imposed on the respondent/surety under the code.

**Apology at any stage of the proceedings.**-(i) If at any time during the pendency of the proceedings, the contemner tenders an apology, the same shall be placed expeditiously for orders of the bench.

(ii) If the Tribunal accepts the apology, further proceedings shall be dropped.

**Costs.**- (i) The Tribunal may award costs as it deems fit in the circumstances of the case.

(ii) The costs so awarded shall be recovered in the same manner as a fine imposed under the Code.

**Application of other Rules of the Tribunal.**- In matters not specifically provided for in these rules, the procedure prescribed in the relevant rules of the Tribunal as amended from time to time shall mutatis mutandis apply to proceedings under the rules.

**Application to pending proceedings.**- These rules shall as far as practicable apply to pending proceedings.
Chapter 15

DRILL ON HANDLING/MONITORING OF COURT CASES

TYPES OF APPLICATIONS

1. An aggrieved person moves the Tribunal with a prayer for relief. The application wherein he submits his grievance, and prays for relief is known as Original Application (OA). In the course of disposal of the Original Application, written submissions of several other types are also filed before the Tribunal which are incidental to the process of adjudication of grievances. The details of the various applications/petitions, which are filed before the Tribunals are explained in the succeeding paragraphs.

2. Original Application (OA): This marks the commencement of the litigation. This is filed by person(s) aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. OAs are filed under Section 19 of the Administrative Tribunals Act, 1985. The OA should conform to the form prescribed in the Rules. The OAs are numbered serially throughout the year for example OA No. 1/1977, OA No. 2/1997, etc. OA is referred to through the serial number and the year of filing e.g. 2049/95, 1831/96 etc. The number and year together, are capable of uniquely identifying an application. All references to the OA are made through this number only and hence this is of utmost importance in dealing with the case.

3. Transferred Application (TA): As per Section 29 of the Administrative Tribunals Act, 1985, every suit or other proceedings pending in any court before the establishment of the Tribunal should stand transferred to the Central Administrative Tribunal (CAT) after the establishment of the Tribunal. We are aware that the Central Government has the powers to bring in more organisations (public Sector Undertakings, Autonomous bodies etc.) within the jurisdiction of the CAT. As and when any such new organisation is brought within the jurisdiction of CAT, any suit or proceeding relating to such organisation (on service matter only) should be transferred to the CAT. Such applications which are transferred from other courts to CAT are numbered as Transferred Application No....!... e.g. TA No 2212003, TA No 34512001 .

4. Review Application (RA): Parties before the Tribunal may file applications for Review of the orders of the Tribunal. Such applications which pray for review of any Order of the Tribunal are known as Review Application (RA) and are referred to as RA No.______of ______ in OA No. ______/19..... e.g. RA No 16 of 2003 in OA No 345/2003.

5. Contempt Petition: Parties may file contempt petition against each other. Generally, such petitions are filed by the applicant in OA alleging that the Orders of the Tribunal in the OA have not been complied with by the respondent and thus, the respondent is guilty of Contempt of Court. There are two kinds of Contempt of Court viz. Civil and Criminal. The petitions are numbered as CCP (Civil/Criminal) and are generally referred to as CP No. ____of 19 ____ in OA No. ____ of 19 __. Contempt Petitions are filed by name against the official who is alleged to have committed contempt of court In case contempt is established, the official concerned
may be sentenced to pay fine or undergo imprisonment. At times the CAT may direct personal appearance of the official alleged to have committed contempt.

6. **Petition for Transfer**: As per Section 25 of the Administrative Tribunals Act, 1985 any of the parties to an application may request the Chairman for transfer of a case from one bench to another. Such requests for transfer of case are numbered as PT No.____/19____.

7. **Miscellaneous Application (MA)**: In addition to the applications/petitions, which are for specific purposes, there may be occasions for the parties before the Tribunal to make written submissions for other purposes such as the following:
   a) Vacating interim orders
   b) Making Amendments to the Pleading.
   c) An applicant may like to add more respondents to the case
   d) A party may like to apprise the Tribunal of further developments, which have a bearing on the case.
   e) Seeking extra time for implementing order.

8. The above list is purely illustrative and not exhaustive. Whenever a need arises for additional written submission to the Tribunal the same is met through Miscellaneous Applications. They are numbered as MANo. of 19_ and are referred to as MA No. ___of___ in OA No. ____of____

9. While discussing the case with the Counsel or while inquiring about the case from the court officials, one must quote the complete OA number i.e. number of the year and also the detail of the application i.e. CCP No. _____or MA No. _____ etc.

**2 Action On Receipt Of Notice**

1. Notices may be received from the Tribunal either by post or through the officials of the Tribunals. At times even the party to an OA may also bring the notices. The notices brought by the party are known as "DASTI" and the same are of urgent nature.

2. As per the instructions contained in Government of India Deptt of Personnel and Training OM No. A 11029/21188-AT dated August 1988, the officer receiving the notice should indicate his name and designation along with the office stamp, date and time of receipt on the acknowledgement slip. These instructions must be scrupulously complied with.

3. Normally Notices are received by the Govt. Departments under the following circumstances:
   (a) Notice to show cause against admission.
   (b) Notice after admission-for the purpose of contesting the case.
   (c) Notice meant for the employees working under the responder department.


5. In the types of cases mentioned under Para (c) above, the Head of the Department receiving the notice is required to get the notices served on the private respondents urgently and obtain their acknowledgement Thereafter an affidavit may be filed in the Registry conforming compliance and enclosing the copies of the acknowledgement.
6. As regards the notices mentioned at Paras (a) and (b) above these are meant for the respondent department and call for elaborate action on the part of the recipient. The first issue that arises for determination by the recipient is the extent to which he is involved in the case. At times an applicant may sue more than one department in the same OA e.g. an applicant who moves the Tribunal regarding allotment of his Govt accommodation in favour of his son or daughter may include in the array of parties in Ministry of Urban Affairs, Dte of Estates, the Department in which he was serving and the Department wherein the son/daughter is working. Another example is of an employee serving in the Ministry of Industry who may challenge the validity of the provisions in the guidelines issued by the DOP&T for conducting the DPC because the DPC held in his department has not selected him for promotion. Thus there may be two types of circumstances wherein more than one department is imp leaded by an applicant.

   (a) Where he has challenged the action of one department based on the guidelines issued by another Department
   (b) Where the facts of the case relate to more than one Department

7. In all such cases a common defence will be put up on behalf of the Government of India. There should not be any contradictory statements or stands by various departments. As per Govt. of India, Deptt of Pers. & Trg OM No. 20036123/68-Estt dated 6 June 89 the primary responsibility for contesting the cases will be with the Administrative Ministry/Department concerned on the basis of the specific facts pertaining to them.

8. As regards the case wherein the applicant has impleaded more than one department, which have played various roles in the transaction, which has resulted in the grievance of the applicant, it would be appropriate that the defence of the case is handled by the Deptt whose order is being challenged. Under such circumstances, the defending department will pursue the case in consultation with other co-respondents. The recipient of the notice will decide the extent and the level of his involvement in the case and accordingly decide as to who will handle the case before the Tribunal. In case primary respondent is of the view that the case is required to be handled by it then it has to get in touch with other Govt respondents and appraise them suitably. The comments of other departments will be obtained on the specific paragraphs pertaining to them and incorporated in the reply. Draft reply, when prepared will also be shown to other respondent departments. The progress of the case will be intimated to all the respondent departments from time to time. Alternatively, if it is felt that involvement of our department is limited and the case is required to be handled by some other respondent, then, letter has to be written to the primary respondent accordingly, preferably along with the reply on the paragraphs pertaining to the department. The primary respondent will keep informed the other respondents of the progress of the case from time to time. During the course of the case also there may be occasion when a respondent other than the one who is pursuing the case before the Tribunal may be required to produce records. Such requirements will have to be complied with through the co-ordinated action of all the respondents in the case.

9. The above mentioned procedure applies only in respect of the official respondents which include respondents who are impleaded by name for action taken by them in discharge of official capacity. It is also likely that the respondent, who is aggrieved by the seniority position assigned to him, may sue his colleagues who have been,
according to him, ‘wrongly placed above him in the seniority list. Such persons are known as private respondents. Defending department is not required to take any action on behalf of such respondents.

10. After writing to the co-respondents, the primary respondent will initiate action for engagement of Government Counsel. In respect of the Principal Bench, engagement of Counsel is done by the Dy Legal Advisor whose office is located in the premises of the High Court. The defending department will have to pursue the case with the Dy. Legal Advisor for engagement of counsel.

11. In case the date of hearing mentioned in the notice is so short that the counsel could not be appointed by them, an officer of suitable level, well conversant with the facts of the case should appear before the Tribunal on the appointed day. When the case is called, the officer will have to present himself, reveal his identity, establish the same by production of identity card and pray for extension of time for filing reply, stating that action for engagement of counsel is being taken and that the respondents will be contesting the case through the counsel. In case the applicant has filed for any interim relief the hearing may not be as simple as above. Under such circumstances, the official appearing for the respondent will have to be fully prepared to argue against the grant of interim relief. Alternatively, efforts for engagement of the counsel should have been stepped up so as to ensure that the counsel is available well in time before the date of hearing. Nevertheless, on receipt of a notice, there is no harm in looking into the case once again keeping in mind the facts brought by the applicant. If the relief sought is found to be due and admissible to the applicant, at this stage also case can be reviewed and the decision brought to the notice of the Tribunal.

12. Section 23(2) of the Administrative Tribunals Act, 1985 provides that the defending department may authorise one or more legal practitioners or any of its officers to act as presenting officers and every person so authorised by it may present the case with respect to any application before a Tribunal. Rule 62(b) of the CAT Rules of Practice provides that a presenting officer other than a legal practitioner representing any of the parties shall also file a memo of appearance in Form II. As per DOP&T instructions on the subject, a Group A Officer may be nominated as Presenting Officer with the approval of the Minister concerned. The appointment of such presenting officer is required to be communicated to the Registry. The presenting officer so appointed can file reply on behalf of the department and argue the case before the Tribunal. While filing the reply, the Presenting Officer is required to file a memo of appearance as specified in the roles.

13. In case it is decided that the case will be defended through the departmental presenting officer, he must be contacted with full facts of the case and his guidance be obtained for preparation of reply. As regards the engagement of Govt. Counsels, the office of Dy. Legal Advisor, Ministry of Law endorses a copy of the order engaging the, counsel to the respondent also. The counsel concerned must be contacted immediately on receipt of information about his/her appointment and the case be pursued as per his advice. Without waiting for the appointment of counsel, action for drafting reply should be pursued so that the respondent may have the draft reply ready even before their first meeting with the counsel. It will be a good practice to keep meeting the counsel regularly, well in time before each hearing.
3 Preliminary Objection

Legal proceedings may be contested in two distinct ways—viz., on merit and on maintainability. The objection to an Original Application (OA) on the merits of the case rests on the facts and circumstances of the case and the law relating to the same. On the other hand, there are some general aspects relating to the maintainability of the OA without going into the merits of the averments made therein. In fact, it means that irrespective of the merits of the applicant's case the applicant is not entitled to approach the court and get any relief. Accordingly, it should be the endeavor of the respondent to contest the proceedings on both the grounds. The objection relating to the maintainability of the application is also known as Preliminary Objection. Such objections are to be disposed off before the court takes up hearing on the merits of the case. Some of the Preliminary objections which are available to the respondent are explained in the succeeding paragraphs.

Jurisdiction: - The Court moved by the litigant must have jurisdiction to adjudicate on the matter raised by the applicant. In case, the applicant moves any Court other than the Tribunal for redressal of his grievance relating to service matters, the proceedings can be resisted on the ground of lack of jurisdiction. In this connection Section 28 of the Administrative Tribunals Act, 1985 is relevant and the same is reproduced below:

Exclusion of jurisdiction of courts except the Supreme Court

On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service, or post, no court except:-

(a) the Supreme Court, or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947), or any other corresponding law for the time being in future, shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.

The above statutory provision has to be viewed in the light of the recent judgement of the Hon’ble Supreme Court in 1. Chandra Kumar V s Union of India and Others, 1997(3) SCC 261. Extract of the judgement is reproduced as under:

“In view of the reasoning adopted by us, we hold that clause 2( d) of Article 323A and clause 3( d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the exclusion of jurisdiction clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the "High Courts under Article 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226m7 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of
statutory provisions and roles. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated”.

**Jurisdiction with reference to Bench [Rule 6 of CAT Procedure Rules, 1987]**

**Place of filing application:** - (1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction

   a) the applicant is posted for the time being, or
   b) the cause of action, wholly or in part, has arisen:

   Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under Section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

   (2) Notwithstanding anything contained in sub-rule(1) a person who has ceased to be in service by reason of retirement, dismissal or termination of service may at his option, file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application.

**Limitation:**Section 21 of the Administrative Tribunals Act, 1985, prescribes the period of limitation for moving the Tribunal. The above Section is reproduced below for ready reference:

(1) A Tribunal shall not admit an application,

   (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such an order has been made.

   (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where

   (a) the grievance in respect of which an application is made had arisen by reason of any order made at anytime during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates: and

   (b) no proceedings for the redressal of such grievance had commenced before the said date before any High Court.
The application shall be entertained by the Tribunal if it is made within the period referred to in clause (a) or, as the case maybe, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

In case an application has been filed beyond the period of limitation, the respondent can challenge the maintainability of the same on this ground alone. However, it must be remembered that the applicant who files an application beyond the period of limitation, generally files a Miscellaneous Application (MA) for condonation of delay. If the applicant has admitted that the application is being filed beyond the period of limitation and has moved a MA for condonation of delay, the respondent should also file a separate reply to the MA. The applicant would have endeavored in the MA for condonation of delay that he had "sufficient cause" for not filing the OA within the period of limitations. Accordingly, the respondents stand in the reply to this MA should be that the applicant has not shown "sufficient cause" for the delay.

With regard to limitation, the following points are relevant:

(a) Repeated unsuccessful representations do not extend the period of limitation. Assume that an employee's request for stepping up of pay has been rejected in Oct 88 by competent authority. Also assume that he makes repeated representations in Jan 89, Jul 89, Feb 1990 and Jul 1990 on the same issue and the last of such representations was rejected in Aug 90. The employee cannot move the Tribunal in Sept 1990 or Oct 1990 contending that his case was rejected only in August 1990.

(b) Where an appeal has been prescribed through statutory provisions, the employee is required to exhaust this remedy before moving the court.

S.S. Rathore V s State of M.P. (1989) ATC 913 (SC) is an important case in this regard.

(c) It has been held in a number of cases that an application in which cause of action accrued prior to 01/11/82 (CAT was established w.e.f. 01/11/85) is time barred and that this infirmity is incurable.

There are a number of issues relating to limitation such as continuing cause of action, limitation, void order etc. It is essential to bear in mind that limitation is a among preliminary objection in the hands of the respondent and any fact having a bearing on limitation should, therefore, promptly be brought to the notice of the counsel so that he can draw the best advantage out of it.

Mis-joinder & non-joinder of parties: An applicant is required to include, in the name of respondents, all those who are likely to be affected if the relief prayed for by him is granted This is over and above these parties from whom the relief is claimed. If an applicant has failed in this respect, the respondent may raise the objection of mis-joinder/non-joinder of necessary parties e.g. when an employee contends that he has been wrongly denied promotion and in his place certain ineligible persons have been prohibited. If he has not impleaded such persons, who, according to him have been
wrongly promoted, the respondent may oppose the OA on the ground of non-joinder of official parties.

However, it is relevant to know that generally, the OA is not dismissed on this ground. Normally, the CAI directs the applicant to include the necessary parties in the array of respondent. Nevertheless, it is appropriate for the respondents to bring to the notice of the court, the fact regarding non-joinder of parties, so as to avoid any future complications.

**Res-judicata:** The term Res-judicata literally mean "a thing which has been decided", It is based on the Roman Maxim that it concerns the state that there should be an end to litigation. The principle is also based on the maxim that "no man should be vexed twice over the same cause". According to the doctrine of Res-judicata if a matter has been directly and substantially in issue under the same set of parties and has been decided by a court of competent jurisdiction, then it will not be entertained by any other court in future. This doctrine is contained in Section 11 of the Code of Civil Procedure (CPC). While one does not expect the same applicant to move the Tribunal for the second time, after losing an earlier case, there are certain other aspects like constructive Res-judicata, which may be available for the respondents on several occasions. The explanations below Sec. 11 of CPC provide the circumstances under which the plea of constructive res-judicata will lie. e.g. If an employee moves the Tribunal initially for revision of seniority, and after winning this case, for holding of review DPC and after winning this case, on the third occasion for payment of arrears of salary, it may be possible to contend that he ought to have claimed all the relieving the first OA itself and failure on the part to do so results in the latter OA being hit by the doctrine of Constructive Res-judicata.

It is however, necessary to bear in mind that this is a legal concept and there are several delicate points which are liable to be raised by the contesting parties for and against the application of this principle. It is the duty of every official pursuing the case on behalf of the respondents to bring to the notice of the counsel, every fact that may help in setting up a successful plea of Res-judicata.

**Estoppel:** Estoppel is also a legal concept which promotes a party from raising a plea on certain circumstances. As per section 115 of Indian Evidence Act. 1 972, when one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding-between himself and such person or his representatives, to deny the truth of that thing. As in the case of Res-judicata, the applicability of estoppel also depends upon a number of circumstances. However, a diligent litigant is under a duty to bring to the knowledge of his counsel any information which will help in raising this plea e.g., if an applicant has got employment by mis-representing his date of birth, he cannot at a later time question the act of the employer which is based on the fact presented by the employee.

**Non-exhausting of official remedies:** - Section 20 of the Administrative Tribunals Act, 1985 provides that the "Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievance" subsequent Sub Rules of the above section also clarify that a person shall be deemed to have availed of the remedies after expiry of six months from the date of making appeal, if any, preferred by him, even if no final order has been made. If any applicant has rushed to the court
against his suspension, the same can be resisted, without going into the merits of the application on the grounds that the applicant has not availed of the departmental remedy open to him by way of statutory appeal under CCA Rules.

**Suggestion falsi and suppressio veri** - Every person is expected to approach the court with clean hands. In case, the court is convinced that the applicant has suppressed material information from the court or has made some misleading statements in his OA, the same will be a very good ground for seeking dismissal of the OA without going into the merits. In all such instances, every effort must be made to raise the plea of suggestio falsi and suppressio veri with adequate evidence.

**Plural remedies**: As per Rule 10 of the CAT procedure Rules, 1987, an application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another. Thus, it will be lawful for an applicant to seek quashing of an existing seniority list, revision of his seniority, holding of review D PCs for promotion as per revised seniority and arrears of pay and allowances. All these reliefs can be claimed in the same OA because they are consequential to one another. If on the other hand an applicant requests for revision of date of birth and counting of past service rendered in some other department in one OA the same can be challenged for being violative of Rule 10 of the CAT Procedure Rules, 1987.

Normally, an OA is not likely to be dismissed on the ground that it contains plural remedies. It is also open to the court to admit the OA in respect of only those remedies. Notwithstanding this position, it is the duty of the officials pursuing the case to bring to the notice of the CAT that the applicant has prayed for unconnected plural remedies and the OA is liable to be dismissed on this ground.

Preliminary objection is a powerful weapon at the hands of the respondents. Successful plea of limitation, Res-judicata etc. will enable the respondents to get the OA dismissed without going into the merits of it. Besides, winning a case on preliminary objection will save considerable time and effort as well. Hence a conscious attempt must be made to look for possible preliminary objection and raise the same.

At times, if prayed for, the court may permit the filing of a short reply opposing maintainability of the OA Under such circumstances, the short reply should be filed in time reserving the right to file detailed parawise reply, if needed, after the question of maintainability is decided. Respondents will be required to file detailed parawise reply only if the question of maintainability is decided in favour of the applicant Alternatively, preliminary objection can be listed in the counter reply as well. This should be brought to the notice of the court at the time of admission itself. The court may hear the preliminary objection at the time deciding the admission of the OA or at the time of final disposal.

**Preparation and Filing of Reply**

Respondents are required to file reply to Original Application (OA) as well as the Miscellaneous Application (MA) filed by the applicant so that the averments made by the applicant are clarified and the correct position is placed before the court. Reply of the respondents is required to be drafted with utmost care because the same forms the basis of the respondent's defence. In case a point is not brought out in the reply, it may become difficult to effectively contest the case at a later stage and hence it is essential
that the case of the respondents is brought out in its entirety with all the supporting documents. It may be appreciated that at the time of final disposal of the case reliance can be made only on the documents forming part of the records of the case and hence no document which will help the case of the respondents should be left out at the time of making the reply. Besides, the reply is required to be filed within the time allowed by the court, because a reply filed after expiry of time granted by the Tribunal will not form part of the records of the case and will not be taken into account for the purpose of disposal of the case.

Rule 12 of the CAT Procedure Rules, 1987 prescribes that each respondent intending to contest the application shall file, in triplicate, the reply to the application and the documents relied upon in the paper book form with the registry. Although each respondent has a right to file a reply, it would be appropriate to file a common reply in respect of all the official respondents. This must be done with the consent of the departments concerned after ascertaining the views of the respective departments and also after showing the draft to them. The rule further prescribes that the respondent shall specifically admit, deny or explain the facts stated in the application and may also state additional facts as may be found necessary for the just decision of the case.

It may seem from the above that the following tasks are involved in the preparation of reply:
(a) ascertaining the veracity of the facts narrated by the applicant.
(b) Ascertaining the correct facts relating to the issue agitated in the OA.
(c) Exploring the possibility of raising any preliminary objections regarding the maintainability of the OA.
(d) Collection of documents in support of the case of the respondents.
(e) Identification of any identical case filed by any other employee of the department for similar relief. This will not only facilitate easy preparation of the reply but also enable the respondents to move the Tribunal for linking the identical cases to be heard and disposed off together.
(f) Identification of any precedent especially unreported cases which will be known only to the department. This will strengthen the case of the respondents of the earlier decision was in favour of the respondents. Alternatively, it will help the respondents to effectively resist the present OA by removing the defects, which were present on the earlier occasions.

After the facts and documents are collected, the process of drafting reply begins. Before the material portion of the reply, there are certain introductory paragraphs required in the reply and the same are as under:-
(a) The identity of the official filing the reply should be given in the opening paragraph.
(b) There should be a recitation to the effect that the officer filing reply is competent and has been duly authorised to file the reply on behalf of answering respondents.
(c) There should be confirmation to the effect that he has read the OA and has understood the contents. It is generally stated that except as has been expressly admitted hereunder, all the material averments in the OA are denied. This may serve as a saving clause incase the respondents have failed to answer any of the averments made by the applicant.
The third part of the reply should contain preliminary objection, if any to the respondents desire to take.

Often it may not be sufficient for the respondent to simply admit or deny what has been stated by the applicant in the OA. It will be of great advantage if the facts of the case are presented in chronological or logical order in a cohesive manner in its entirety so that the complete details of the case could be understood in one go. It will be a good practice to open the reply of the respondents (after the paragraphs mentioned above), with "Brief Background of the case". This portion should contain all the relevant facts of course only the relevant facts which are essential for acquiring complete Knowledge about of the case. It may be appreciated that the applicant would be interested only in his case and \ill be presenting the facts of the case as shown to him or as suitable to him.

The respondent, being responsible for larger issues, would have taken decision based on certain guidelines by use nodal agencies or as a result of the policy decision, etc. which may not be even known to the applicant. Further, the respondents would also allow the repercussions if the applicant's request is accepted. Presentation of these facts in proper perspective goes a long way in enabling the court to appreciate the case of the respondents. It is also worth remembering to 'state such additional facts as may be found for the just decision of the case'. Maximum benefit may be drawn from the facility provided to the respondent.

Thereafter, parawise reply on merits, on the averments made by the applicant in his OA is given. This is perhaps the most crucial part in the respondent's reply. Every averment made by the applicant must be viewed in its proper perspective and the respondent's version of the same may be given. [For example, assume that an applicant has stated in Para I of his OA 'This application is being filed against the illegal order of suspension passed by Respondent No.2 vide order No. ______ dated ______ annexed and marked as Annexure A-I'. On the face of it, it may appear that there is nothing to counter or contradict that has been stated by the applicant because he has only cited the order against which he is moving the Tribunal. While referring to the order of suspension be has described the same as illegal'. It would be appropriate to place on record that the impugned order is valid in the eyes of law.

The following points are to be kept in view while drafting reply:

(a) In order to avoid repetition of facts, the respondents may invite the attention of the Tribunal to the relevant paragraph:

(b) At times, the applicant might have mentioned certain facts, which are not essential for the purpose of the case and the same may not be within the knowledge of the respondents. For example, an applicant whose pension alias been withheld, would have stated facts relating to his domestic problem as well. Under such circumstances the respondents may plead ignorance of the facts simultaneously pointing out that the domestic circumstances are not relevant for determining the legal validity of the impugned order.

(c) On certain occasions, the respondents may not be in a position to comment on the truth or otherwise of the contention of the applicant even though the correction may have a bearing on the case. For example, a person may be
pleading that he could not file OA in time because he was suffering from some ailment and hence his prayer for condonation of delay be allowed. Under such circumstances, the respondents may plead ignorance and also submit that 'the applicant be put to strict proof of the averments made by him'.

(d) There may be paragraphs which are formal in nature such as the details of the [PO, etc. Against these paras respondents may state 'being formal does not call for any reply from the answering respondents'.

Finally, the respondents are required to make a formal prayer for the dismissal of the OA. The prayer may be in the following form:

**PRAYER**

In view of the submissions made hereinabove, in the brief background of the case, preliminary objections and the para-wise comments, the applicant is not entitled to any of the relief prayed for and the application is liable to be dismissed with costs.

It is prayed accordingly.

This is required to be followed by verification by the officer who signs the reply.

In the course of the reply, whenever supporting documents are available for substantiating the contention of the respondents, a reference should be made in the body of the reply to the appropriate annexure. The documents annexed to the reply are to be marked as R-1, R-2, R-3, etc. The copies of the documents are required to be attested by a legal practitioner or a gazetted officer as under:

This annexure ____________________ is the True copy of the original document

Sd/-
Name and Designation

The language of the reply has to be clear, precise and free from ambiguity. The following points may be kept in mind while preparing the reply:

(a) The names of persons and places must be spelt accurately, throughout the reply.

(b) Abbreviations should be avoided as far as possible, especially when they pertain only to Govt Departments.

(c) Generally pronouns like he, she etc. are avoided in pleadings. Parties are referred through their legal positions e.g. "Applicant No.3 joined service under correspondent No. 3 with effect from _____".

(d) Whenever a statutory provision is referred to, the exact language of the statute should be used. e.g., as per CCS (CCA) Rules, 1~65, reduction to lower stage in the time scale for a period not exceeding three years is a or penalty. Although the phrase 'not exceeding three years' more or less means the same as 'for a maximum period of three years' such conversations should be strictly avoided while drafting pleadings for the court.
After the draft reply is made the same must be got approved by the Govt. Counsel who has been engaged for defending the case. After clearance from the counsel, the draft is required to be got vetted by the Legal Advisor.

Rule 4 of the Central Administrative Tribunal Rules of Practice, 1992, relating to the preparation of pleadings is reproduced hereunder for ready reference:

Preparation of pleadings and other papers

(a) All pleadings, affidavit, memoranda and other papers filed in the Tribunal shall be fairly and legibly typewritten or printed in English or Hindi Language on durable White foolscap paper of Memo A-4 size (30.5 cm long and 21.5 cm wide) on right margin of 2.5 cm duly paginated, indexed and stitched together in paper-book form. The index shall be in form No. I. (b) English translation of documents/pleadings; shall be duly authenticated by any legal practitioner.

The reply can be signed by any of the officers authorised for the purpose. The instructions in this regard are contained in Government of India, Department of Personnel and Training Notification No. A110191105/87-AT dated 28/111. September 1993 published as GSR630(R) in the Gazette of India at the same time. As per the above notification any Group 'A' Officer in any Ministry/Department of the Government of India or any Desk Office in any Ministry/Department of the Government of India or any Group 'A' Officer in any Non-Secretariat Office of the Government of India are authorised to sign all pleadings and other documents to be filed for and on behalf of the Union of India before the Central Administrative Tribunal. The above officers as are acquainted with the facts of the case are also authorised to verify the pleadings. In respect of Contempt Proceedings however, the officers impleaded by name are required to file the reply.

After the reply is complete in all respects and duly signed by the authorised officer, a copy of the same is delivered by hand or sent by registered post, to the applicant or his counsel. The proof of delivery or despatch of the reply to the applicant must be produced before the Registry at the time of filing of reply. The registry gives acknowledgement for receipt of reply.

Action After Final Orders

As you are aware, a case may be dismissed even before you become aware of the fact that the same has been initiated against you. Even after notice, it may be dismissed at the admission stage or after final hearing, due to non-maintainability or lack of merit. Besides, the final order may be dictated immediately on conclusion of the hearing. Such orders are called ORAL orders, (the copies of which will be available in due course) or the case may be reserved for pronouncement of orders. In the later event, the case will figure in the cause list for the day on which it is listed for pronouncement of orders. Such cases, which are listed for the pronouncement for orders, are taken up as the first item of the day. In case, the bench, which pronounces the order, sits only in the afternoon, the list will indicate the same and the order-will be pronounced as the first item in the afternoon.

In view of the above, it is necessary for the officials pursuing the case to be
present in the appropriate courtroom well in time on the date and time fixed for
pronouncement of orders. Normally only the operative portion of the order, running
for a few sentences is read in the court e.g.

"In view of the foregoing, the Original Application (OA) is dismissed, being
devoid of merit, documentary order as to cost"

There may be occasions when the OA may release to several alternative
remedies or the Judgement may partly allow the O.A.. Under such circumstances,
substantial pan of the judgement may be read in the court.

In all cases, effort must be made to secure the copy of the judgement at the
earliest. The need for obtaining the copy of the judgement is all the more urgent in
cases, which have gone against the respondent Rule 22 of the CAT (Procedure) Rules
1987 provides for the supply of free copies of the interim as well as final orders to the
applicant and to the concerned respondent. Generally such copies are given to the
Counsels. Officials dealing with the case will have to be constantly in touch with the
counsels for obtain a the copy of the judgement at the earliest opportunity. Chapter
XVIII of the CAT Rules of Practice 1993 also contains provisions relating to the grant of
Certified and Free Copies. As per Rule 118 of the above Rules "A party to an
application/petition or his legal practitioner shall be entitled to obtain certified copy of
the record, proceedings or original documents filed in case, on payment of prescribed
fee". (Strangers are also entitled to receive copy of the orders on payment offers under
Rule 119). Applications for copies of order are to be made in prescribed forms and are
to be deposited along with a fee of Rs. 5/- per page for ordinary copies and @ Rs. 2/- per page for urgent copies. These facilities may
also be availed in case of need, without waiting for the free copy supplied by the
Tribunal to the counsel. The date of receipt of the certified copy of the judgement by
the party or counsel is crucial in determining the right of the party for filing
Appeal/Review Application. Thus, every effort must be made to obtain the copy of
the orders at the earliest as and when the same is ready with the registry.

If an OA has been dismissed without any relief to the applicant and without
any observation pertaining to the respondent, there may not be any action due on the
part of the respondent Such cases may help as precedent in the event of any
subsequent OA being filed on the same issue.

At times, even though the applicant is not granted any relief: there may be
observations or suggestions for the respondents. Such issues will have to be identified
from the orders and pursued diligently.

In case the order grants any relief to the applicant, the following courses of
action are open to the respondents: -

(a) Implementation of the order
(b) Seeking review of the order
(c) Preferring appeal against the order.

Legal advice is obtained before a decision regarding implementation of the
order is taken. Implementation of the order is required to be made within the time
allowed by the Tribunal. In case no time limit is prescribed, the orders must be
complied with at the earliest, at any rate within six months of the date of receipt of
the order. Failure to comply with the office within the prescribed time limit may result in the applicant moving the Tribunal through Contempt Proceedings.

As per Article 323A of the Constitution and Section 17 of the Administrative Tribunals Act, Central Administrative Tribunals have power and authority to punish for contempt. In this regard, CAT exercises the same jurisdiction, power and authority as a High Court under Contempt of Court Act 1971. The Act provides for imprisonment of the party held guilty of contempt. Contempt petitions are required to be dealt with utmost diligence. Any failure in this regard may result in the Tribunal passing order for the personal appearance of the senior officers, besides the final order for contempt To obviate this difficulty, it would be advisable to request the Tribunal through a Miscellaneous Application (MA) for granting extension of time. MA for this purpose should bring about the following:
(a) The efforts made by the respondents for early implementation of the Judgement.
(b) The difficulties faced by the respondents in complying with the directions within the prescribed time limit
(c) Justification for the additional time prayed for.

Provisions and procedure relating to the Review of an order of the Tribunal are dealt with separately.

As per the original provisions or Administrative Tribunals Act 1985 (Section 28), Special Leave Petition (SLP) to the Hon'ble Supreme Court, under Article 136 was the only remedy available to a party aggrieved by the orders of the Tribunal. However, the position has undergone a change with the recent decision of the Hon'ble Supreme Court in L Chandra Kumar Vs Union of India & Others (1997(3) see 261) wherein the Apex court has laid down as under:

"All decisions of the Tribunal will, however be subject to scrutiny before a division Bench of the High Court within whose jurisdiction the concerned Tribunal falls.

Thus, presently, a party claiming to be aggrieved by a decision of the Tribunal has to move the High Court.

Any decision to seek remedy by way of Review or Appeal will have to be taken in consultation with the Law Ministry and the case pursued in accordance with the procedure laid down for the purpose.

It is also relevant to note that the above-mentioned provisions are not confined only to the case of final orders of the Tribunal. An interim order is also required to be complied with within the time limit prescribed by the Tribunal. Extension of time can be prayed in such cases also. In case a party feels aggrieved by the interim order of the Tribunal, the above mentioned remedies can be resorted to.

**Review Application**

Section 22 of the Administrative Tribunals Act, 1985 relates to the procedures and powers of the Tribunals. This section provides that power of reviewing a decision by the Central Administrative Tribunal is one of the matters in which the Tribunal shall have the same power as are with in a Civil Court tender the code of Civil procedure 1908(5 of 1908).
Under the Civil Procedure Code, Review of an order is permissible under the following circumstances:

(a) On the basis of discovery of new and important matter of evidence which after exercise of due diligence, was Dot within the applicant's knowledge or could not be produced by the party at the time when the order was passed.
(b) On account of mistake or error apparent on the face of the judgement
(c) Or for any other sufficient reason.

It must be appreciated that the scope of review is much limited as compared to appeal. A review cannot be sought for fresh bearing of the argument or for correction of allegedly erroneous review taken earlier but only for correction of a patent error of fact which stares in the face without any need for elaborate arguments e. g., if it is stated in an order that,

"the respondents are therefore directed to refix the pay of the applicant to the post of Assistant., in the scale of Rs.2000-3500 at par with respondent N.J., 5 with effect from. 0 1/1 0/92 and to suitably revise the pay of the applicant in the scale of Section Officer with effect from. his date of promotion Le. 20.0 1.95".

Detailed argument is not necessary to establish that there is an error on the face of the judgement.

It must be appreciated that a party will not be allowed to re-open a case under the guise of review. A plea not taken in the OA cannot be raised as ground of review. Further, review cannot be granted on the ground that the Govt. file was shown only to the Tribunal and not to the applicant; such a request should have been made at the time of hearing of the OA itself.

As per Rule 17 of the CAT (Procedure) Rules, 1988 a Review application is required to be filed within 30 days from the date of receipt of the copy of the order which is sought to be reviewed. This period is counted from the date of receipt of order by the party or its counsel. There are also provisions for seeking condonation of delay. The delay caused on account of complying with the procedural requirements of the Government machinery, (Consultation with Law Ministry, obtaining approval of the Competent Authority, etc) have been accepted as sufficient cause for condonation of delay. (Union of India Vs Dharampal (1989) II ATC256). Notwithstanding such liberal approach by the courts, it is imperative that the case for filing of review application is processed with due urgency. Every effort must be made to file the Review Application within the prescribed period of limitation.

As per the above-mentioned rule; a review application can be disposed off without listing it for hearing. Under such circumstances, the case is decided by circulation among the members who heard the case in the first instance.

As per Rule 17(5) of CAT Procedure Rules, 1987, a review application is required to be supported by a duly sworn affidavit, indicating therein the source of knowledge, personal or otherwise (i.e. based on official records in the custody of the deponent) and also those which are sworn on the basis of legal advice. The Counter-Affidavit in Review application is also required to be a sworn affidavit whenever any averment of fact is disputed.
The right of a party to seek review is without prejudice of its right to appeal. It has also been held that a review application can be pursued even after losing an SLP against the same judgement. However, the party is required to keep the courts informed of the fact that he is pursuing an alternative remedy as well.

Normally, the pendency of review application is accepted as a valid defence in contempt proceedings arising on the plea of non-implementation of the judgement. As a measure of caution, it would be appropriate to bring this fact to the notice of the court and pray for extension of time for implementation or stay of the judgement.

**Action by the Main Respondent (concerned office) on receipt of court case**

1. Enter the case in the list/register of court cases
2. Prepare a photocopy (clearly legible) of the OA/CWP received from the Court/Nodal office/HQrs office.
3. Forward immediately the notice (in original) received from the court with legible photocopy of OA/CWP to the concerned Nodal officer for engaging a Govt counsel and for monitoring the case.
4. Forward a copy of the OA/CWP to HQ office along with a short statement of the case.
5. Examine the issues involved in the OA/CWP/Suit.
6. Prepare
   (i) Statement of case
   (ii)Parawise comments
7. Forward to the Nodal officer, documents referred at SL. No 6 above along with legible photocopy of rules and regulations in support of the parawise comments, for getting draft counter reply prepared by the Govt counsel
8. On receipt of draft counter reply from the Nodal officer prepare the following set of documents in triplicate (only in those cases where vetting of Ministry of Law & Justice is required through HQrs office) for transmission to HQrs office:
   a. Statement of case
   b. Parawise comments
   c. OA/CWP
   d. Draft counter-reply/Counter affidavit
9. On receipt of vetted copy from HQrs office, take the following action:
   a. Prepare counter reply with Index (six copies).
   b. Signatures of Group “A” officer, duly affixed with his official seal, at appropriate place of all the six copies or as advised by the CGSC.
   c. Signatures of a Gazetted officer on annexures, if any, duly affixed with his official seal.
10. Send the counter reply (six copies) mentioned at SL. No 9 above to the Nodal officer for getting the same filed in court through the Government Counsel.
11. Monitor the Court case and intimate the outcome of every hearing to the HQrs office through Fax message/E-mail till its finalization.
12. On receipt of court orders forward the same (in duplicate) along with the legal opinion of the Govt counsel.
13. Await instructions from HQrs office on implementation of court orders or otherwise.
14. If HQrs office directs to implement the court order, take immediate action to implement the orders within the stipulated period.
15. If HQrs office directs to prefer an appeal against the said order take immediate steps to challenge the order in the next higher court.
16. If action is taken as mentioned at SL. No 14, render an implementation report to HQrs office on compliance of court orders.
17. If action is taken, as mentioned at SL. No 15 above, take action by following the necessary steps for challenging the Court order as mentioned above.
18. Release payment to the Govt counsel as per instructions issued by Min of Law and Justice from time to time.
19. Update the list/register of cases, regularly.
20. Send reports of court cases to HQrs office regularly as desired from time to time.

**ACTION BY THE NODAL OFFICE ON RECEIPT OF COURT CASE**

1. Enter the court case received from the main respondent in the list/register of court cases.
2. Engage a Govt. Counsel immediately to defend the case.
3. Seek extension of time in case the next date of hearing is at a very short interval.
4. Intimate the date of hearing to the concerned office (main respondent) and HQrs. Office.
5. Maintain a constant liaison with the concerned office for getting parawise comments to the court case.
6. Liaise with the Govt. Counsel and briefing on complete facts of the case and the relevant Rule position on the subject, to enable him defend the case in the best interest of the UOI.
7. Get the counter-reply prepared from the Govt Counsel at the earliest.
8. Examine the draft counter-reply prepared by the Govt. Counsel.
9. Transmit the same back to the concerned office.
10. On the receipt of counter reply duly signed by the competent officer file the same in the court through the Govt. Counsel.
11. Detail representative to attend the court on every date of hearing and intimate the outcome of hearing to the concerned office and HQrs. Office through Fax/E-mail.
12. Procure a copy of the judgement and transmit the same to the concerned office and HQrs. Office along with the opinion of the Govt. Counsel regarding the feasibility of filing a review/appeal in the next higher court.
13. Obtain in writing from the Govt. Counsel a list of documents required to be produced in the court.
14. If notices are issued and handed over to the Govt. Counsel by the court pertaining to the DAD cases collect the same along with the letter of the Govt. Counsel and dispatch the same to the concerned Controller’s office.
15. Update the list/register of court cases, regularly.
Chapter 16

ARBITRATION AND CONCILIATION ACT, 1996

The law relating to Arbitration is contained in the Arbitration and Conciliation Act, 1996. It came into force on the 25th day of January 1996. This Act is of consolidating and amending nature and is not exhaustive. But it goes much beyond the scope of its predecessor, the 1940 Act. It provides for domestic Arbitration and also enforcement of foreign arbitral awards. It also contains the new feature on conciliation. It proceeds on the basis of the UN Model Law so as to make our law accord with the Law adopted by the United Nations Commission on International Trade Law (UNCITRAL).

The main objectives of the Act are:
1. to comprehensively cover international commercial arbitration and conciliation as also domestic arbitration and conciliation.
2. to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration.
3. to provide that the Arbitral tribunal gives reasons for its arbitral award.
4. to ensure that the Arbitral tribunal remains within the limits of its jurisdiction.
5. to minimize the supervisory role of courts in the arbitral process.
6. to permit an Arbitral Tribunal to use mediation, conciliation or other procedure during the arbitral proceedings to encourage the settlement of disputes.
7. to provide that every final arbitral award is enforced in the same manner as if it were the decree of the court.
8. to provide that a settlement agreement reached by the parties as a result of conciliation proceedings will have the same status and effect as an arbitral award on agreed terms on the substance of the dispute rendered by an Arbitral Tribunal; and
9. to provide that for purposes of enforcement of foreign awards, every arbitral award made in a country to which one of the two international conventions relating to foreign arbitral awards to which India is a party applies will be treated as a foreign award.

Meaning of Arbitration [ S 2(1) ]

In the terms of sub-section (1) (a), arbitration means “any arbitration whether or not administered by permanent arbitral institution”. Law encourages parties as far as possible, to settle their differences privately either by mutual concessions or by the mediation of a third person. When the parties agree to have their disputes decided with the mediation of a third person, but with all the formality of a judicial adjudication, that may be speaking broadly, called as arbitration. An arbitration, therefore, means the submission by two or more parties of their dispute to the judgment of a third person called the “arbitrator”, and who is to decide the controversy in a judicial manner. “Arbitration” is thus defined by Romilly M R in the well-known case of Collins v Collins:

“An Arbitration is a reference to the decision of one or more persons, either with or, without an umpire of a particular matter in difference between the parties.”
Arbitration requires a dispute. An agreement to refer future disputes to arbitration is only an agreement, and not arbitration. Even where a dispute has arisen and the parties agree to have it decided by a third person that may not be arbitration unless that person is to act judicially.

Thus the usual features of arbitration are the existence of dispute between the parties and their agreement to refer it to the decision of a third person with the intention that he shall act judicially.

Whatever be the type of dispute, the matter in dispute must be of a civil nature. Matters of criminal nature cannot be referred to arbitration. In most cases, reference to arbitration shuts out the jurisdiction of the courts, except as provided in the Act and since criminal courts cannot be deprived of their jurisdiction to try criminals, no criminal matter can be referred to arbitration.

The second important feature of arbitration is the agreement between the parties to a dispute to refer the matter to arbitration. The word ‘reference’ was defined in Section (2) (e) of the now repeated Arbitration Act, 1940, this way: ‘reference’ means reference to Arbitration.

The Supreme Court has passed the following observation on why arbitration should be preferred. “Arbitration is considered to be an important alternative dispute redressal process which is to be encouraged because of high pendency of cases in the courts and cost of litigation. Arbitration has to be looked up to with all earnestness so that the litigant has faith in the speedy process of resolving their disputes”.

Arbitration agreement

Section (7) (1) of the Arbitration and Conciliation Act, 1996, defines ‘an arbitration agreement as an agreement by parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. The section requires that the dispute must be in respect of a defined legal relationship whether contractual or not. It follows that the discipline must be of a legal nature. The word ‘defined’ would signify the known categories of legal relationships and also the upcoming categories. If the matter or transaction is outside the known categories of relations under which legal rights or liabilities are likely to be created, it would not be an arbitrable matter. [ICICI Ltd., v East Coast Boat Builders and Engineers Ltd., (1998) 9 SCC 728].

Disputes which can be referred to arbitration are (a) present or future disputes which are (b) in respect of a defined legal relationship, whether contractual or not. All matters with a civil nature, with a few exceptions, whether they relate to present or future disputes may form the subject of reference but not the dispute arising from and founded on an illegal transaction. If the agreement relates to a present dispute it will generally amount to a reference, but if it has been entered into merely to provide for any future dispute, it is an arbitrational clause.

No prescribed form of agreement:

Section 7 (2) says that an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. Section 7(5)
clearly provides that the reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make the arbitration clause as a part of the contract.

Therefore no formal form of agreement has been prescribed. In Rukmanibai Gupta v Collector, Jabalpur, the Supreme Court has laid down that an Arbitration clause is not required to be stated in any particular form. If the intention of the parties to refer the dispute to arbitration can be clearly ascertained from the terms of the agreement, it is inmatial whether or not the expression ‘arbitration’ or ‘arbitrator’ has been used. Nor is it necessary that it should be contained in the same contract document. Hence, the whole thing turns upon the intention of the parties.

**Agreement to be in writing:**

Section 7 (3) most emphatically prescribes that ‘an arbitration agreement shall be in writing’. An oral agreement to submit a dispute to arbitration is not binding. If the agreement is in writing it will bind, even if some of its details are filled in by oral understanding. The Act recognizes in Section 7(4) some three methods of arriving at a written agreement. Section 7(4) provides that an arbitration agreement is in writing if it is contained in a document signed by the parties; or in exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement or in an exchange of statement of claim and defence in which the existence of the agreement is alleged by one party and not denied by another.

**Effect of Arbitration Agreement: Stay of suits (S8)(shall)**

The Arbitration and Conciliation Act, 1996 is intended to help the parties to settle their differences privately by conciliation or by arbitration and thereby to spare themselves of wasteful and vexation litigations. In recognition of this principle S.8(1) of the act provides that if any party to an arbitration agreement brings before a judicial authority the matter covered by the agreement, the other party may apply for stay of the suit and for order of reference to arbitration. A judicial authority before which an action is sought shall refer the parties to arbitration. The only condition is that the application shall be accompanied with the original arbitration agreement or a duly certified copy thereof.

Under the 1940 Act, the court should stay such proceedings if it found that there were no sufficient reason why the matter should not be referred in accordance with the agreement. But now under the 1996 Act, S.8 is a mandatory form under S.34 of the erstwhile 1940 Act the court has the discretion in the matter either to stay the suit or bring about arbitration or to permit the suit to go on. Under the 1996 Act (S.8) the word uses is ‘shall’. The effect is that the court has no choice or discretion in the matter and is bound to refer the parties to arbitration.

In Printers, Mysore Ltd., v Pathan Joseph the Supreme Court took the opportunity to emphasize that the power to stay a legal proceeding under S.34 of the 1940 Act was discretionary and the party making such an application could not as of right claim of stay. The discretionary element in the power of the court is not applicable in the 1996 Act. Under the new provisions (S.8) of the 1996 Act, the requirements of stay application and of an order for reference to arbitration were stated by the Supreme Court in P Anand Gajapati Raju v PVG Raju as follows:
1. there must be an arbitration agreement
2. a party to an agreement brings an action to the court against the other party,
3. the subject matter of the action is the same as the subject matter of the arbitration agreement.
4. the other party moves the court for referring the parties to arbitration before submitting the first statement on the substance of the dispute.

The court continued to say that the last mentioned requirement creates a right in the person bringing the action to have the dispute adjudicated by the court once the other party has submitted his first statement of defence. But, if the party, ever after making the statement of defence, prays that the matter be referred to arbitration and the other party has no objection, there is no bar on the court referring the parties to arbitration. The court was of the view that the phrase ‘which is the subject matter of an arbitration agreement’ does not necessarily require that the agreement must already be in existence before the action is brought in the court. The phrase would also cover the situation where the arbitration agreement is brought into existence while the action is pending.

Comparison S.34 of the 1940 Act v S.8 of the 1996 Act

Both the provisions deal with a situation where there is an existing arbitration agreement with respect to a dispute which is the subject matter of a suit before the judicial authority. Though the two provisions are somewhat similar, there are the following vital differences between them:
(i) While S.34 of the old Act, provided for staying the judicial proceedings, S.8 of the new Act provides for referring the parties to arbitration.
(ii) While S.34 of the old Act conferred a discretionary power on the judicial authority to stay the proceedings, S.8 of the new Act imposes a mandatory duty on the judicial authority to refer the parties to arbitration.
(iii) The application of stay under S.34 of the old Act was required to be made before filing of the written statement or the taking of any other step in the proceedings, the application under S.8 of the new Act is required to be made by a party not later than when submitting the first statement on the substance of the dispute.
(iv) While S.34 of the old Act, required that the party making the application was ready and willing to do the things necessary to the proper conduct of the arbitration both the time when the judicial proceedings were commenced and when the application was made, there is no such requirement under S.8 of the new Act.

The Act of 1940 used the word difference but in the new Act in place of difference the word dispute has been used. However, the word ‘Dispute’ has not been defined in the new Act of 1996. The word dispute under ordinary parameters implies an assertion of right by one party and repudiation by another party. The word ‘difference’ has a wider meaning but the word ‘dispute’ is more positive and the difference between the parties when assumed a definite and concrete form they became dispute. The pre-existence of dispute and difference between the parties is very essential at the time when the matter is referred to arbitration. In the absence of dispute between the parties the award made by the arbitrators or the umpire is a nullity in the eyes of law.
Dalip Construction Co. v Hindustan Steels Ltd.

It was held that the existence of a dispute was essential before a matter could be referred to arbitration. Hence, the jurisdiction of an arbitrator depends upon the existence of the claim or the accrual of any course of action, but upon the existence of a dispute.

**Provision of Interim Relief by Courts.**

S.9 provides for the making of orders for interim measures to provide interim relief to the parties in respect of arbitrations before it becomes a decree. The power of the court include an order in respect of the following matters.

- The preservation, interim custody or sale of any goods which are the subject matter of the reference.

- Securing the amount in dispute in the reference.

- The detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon or into any land or building in the possession of any party to the reference.

- Interim injunction or the appointment of a receiver.

- The appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings.

- Such other interim measure of protection as may appear to the court to be just and convenient.

Under S.41(b) of the old Act, an application for interim relief could be moved only if some arbitration proceeding was pending and not otherwise. But under S.9 of the present Act such an application can be made -

- before arbitration proceedings have commenced or
- during arbitral proceedings or
- at any time after making of the arbitral award but before it is enforced in accordance with S.36.

The Supreme Court in Sundaram Finance Ltd. vs NEPC India Ltd. (1999) has expressed the view that relief can be provided in such cases through arbitral proceedings have not been commenced provided there is proof of the fact that the party does not put at rest the rights of the parties.

**Effect of Interim measures.**

An interim measure does not put to rest the rights of the parties. The rights of the parties are required to be adjudicated finally when a reference is made. The court
has the authority and jurisdiction to pass interim orders for protection and preservation of rights of the parties during the arbitration proceedings but that does not necessarily mean that if a party has availed of a benefit under this jurisdiction, the other party cannot put his claim in the main proceeding which is before the arbitrator. The interim arrangement made by the court has to be given the interim status.

Conciliation.

Part III of the Arbitration and Conciliation Act 1996 deals with conciliation. Conciliation means “the settling of disputes without litigation. Conciliation is a process by which discussion before parties is kept going through the participation of a conciliator. The main difference before arbitration and conciliation is that in arbitration proceedings the award is the decision of the Arbitral Tribunal while in the case of conciliation the decision is that of the parties arrived at with the assistance of the conciliator.

S.61 points out that the process of conciliation extends to disputes, whether contracted or not. But the disputes must arise out of the legal relationship. It means that the dispute must be such as to give one party the right to sue and the other party the liability to be sued.

S.63 fixes the number of conciliators which may be one, two or three. Subsection (i) of S.64 provides three rules for the appointment of conciliators.

(i) If there is one conciliator in a conciliation proceeding, the parties may agree on the name of a sole conciliator.
(ii) If there are two conciliators in a conciliation proceedings, each party may appoint one conciliator.
(iii) If there are three conciliators in a conciliation proceedings each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as a presiding conciliator.

Principles of Procedure.

The following are the principles of the procedure which are to be abided in a conciliation proceedings.

(i) The conciliator should be independent and impartial (S.67 (1)

(ii) The conciliator should be guided by the principles of objectivity fairness and justice (S.67(2).

(iii) The conciliator and the parties are duty bound to keep confidential all matters relating to the conciliation proceedings.

Similarly, when a party gives an information to the conciliator on the condition that it be kept confidential, the conciliator should not disclose that information to the other party. (Ss75, 7D, Proviso).
(iv) When the conciliator receives any information about any fact that relating to the
dispute from a party, he should disclose the substance of that information to the other
party (S.70)

(v) The parties should in good faith cooperate with the conciliator. (S.71)

(vi) The conciliator is not bound by the rules contained in the Ccode of Civil
Procedure, 1908, or the Indian Evidence Act, 1872 (S.66). However, he should not
ignore the principles of natural justice.

(vii) The parties have freedom to fix by their agreement the place where meetings
with the conciliator are to be held (S.69(2)).

(viii) The conciliator may invite the parties to meet him or may communicate with
them orally or in writing (S.69(1)).

Procedure of conciliation.

Commencement of Conciliation Proceedings : S.62.

The Conciliation Proceedings are initiated by one party sending a written
invitation to the other party to conciliate. The invitation should identify the subject of
the dispute. Conciliation proceedings are commenced when the other party accepts
the invitation to conciliate in writing. If the other party rejects the invitation there will
be no conciliation proceedings.

Submission of statement to Conciliator : S.65.

The conciliator may request party to submit to him a brief written statement.
The statement should describe the general nature of the dispute and the points at
issue. Each party should send a copy of such statement to the other party. The
conciliator may require each party to submit to him a further written statement of his
position and facts and grounds in its support. It may be supplemented by appropriate
document and evidence.

Conduct of Conciliation Proceedings : S.69 (1) 67(3).

The conciliator may invite the parties to meet him. He may communicate with
the parties orally or in writing. He may meet or communicate with the parties together
or separately. The conciliator may conduct the proceedings in such a manner as he
may consider appropriate.

Administrative Assistance : S.68

The parties and the conciliator may seek administrative assistance by a suitable
institution or the person with the consent of the parties.

Settlement (Ss.67(4), 72,73)

The role of the conciliator is to assist the parties to reach an amicable settlement
of the dispute. He may at any stage of the conciliation proceedings make proposals for
the settlement of the dispute. Such proposals need not be in writing and need not be 
accompanied by a statement of reasons. When it appears to the conciliator that there 
exist elements of settlement likely to be accepted by the parties, he shall formulate the 
terms of a possible settlement and submit them to the parties for their observation. 
After receiving the observations of the parties, the conciliator may formulate the terms 
of a possible settlement in the light of such observations. When the parties have signed 
the settlement agreement, it becomes final and binding on the parties and persons 
claiming under them respectively.

S.74 provides that the settlement agreement shall have the same status and 
effect as an arbitral award on agreed terms under S.30. This means that it shall be 
treated as a decree of the court and shall be enforceable as such.

Termination of Conciliation Proceedings.

S.76 lays down four ways of the termination of conciliation proceedings. These 
are -

(i) The conciliation proceedings terminate with the signing of the 
settlement agreement by the parties.

(ii) The conciliation proceedings stand terminated when the conciliator 
declares in writing that further efforts at conciliation are no longer justified.

(iii) The conciliation proceedings are terminated by written declaration of 
the parties addressed to the conciliator to the effect that the conciliation proceedings 
are terminated.

(iv) The conciliation proceedings are terminated when a party declares in 
writing to the other party and the conciliator that conciliation proceedings are 
terminated.

As a general rule, the parties cannot initiate arbitral or judicial proceedings 
during the conciliation proceedings in respect of a dispute which is the subject matter 
of the conciliation proceedings.

Recommended Reading- Arbitration and Conciliation Act 1996.
Chapter 17

DISCIPLINARY PROCEEDINGS:
RELEVANT CONSTITUTIONAL PROVISIONS

The Constitution of India lays down the provisions governing the affairs of the Indian Union. Some of the specific provisions relating to the subject are:

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

2. Article 310 of the Constitution contains what is known as the Pleasure Doctrine. It provides that the term of appointment of the Government Servant shall depend upon the pleasure of the President. The same Article also provides that the pleasure of the President can be over ridden only by the express provisions of the Constitution and nothing else. Thus, in case there is any express provision relating to the tenure of appointment of a Government Servant, the same will prevail; otherwise, the tenure of appointment will depend upon the pleasure of the President.

3. A restriction on the Pleasure of the President is contained in the immediately following Article viz. Article 311. The first thing to be noted about Article 311 is that it does not apply to the defence personnel. The Supreme Court has clarified that even the civilians working in connection with the defence are not covered by the provisions of Article 311. Article 311 basically grants two protections to the civilian government servants (other than the defence civilians, of course). The two protections relate to who and how. The first part of the Article provides that no person shall be dismissed or removed from service by an authority subordinate to the one by which he was appointed. Thus, the protection is that, before being sent out of service, a Government servant is entitled to have his case considered by the authority who is equal in rank to the one who appointed him to the service. If the penalty of dismissal or removal from service is imposed by an authority who is lower in rank than the Appointing Authority, the same will be unconstitutional. The following are some of the practical difficulties which may arise in complying with this provision:

(a) The employee concerned may be holding a post different from the one in which he was initially recruited and his promotion to the present grade might 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 for making appointment to a grade keeps on changing. Twenty years ago, the power of making appointment to a grade was exercised by an officer of a certain level. Consequent to the decentralisation of powers, the power for making appointment to the same grade is presently vested in a lower level officer. Is there any restriction on the exercise of the power of dismissal by the lower level officer?
A post has been abolished consequent to some re-organisation /restructuring 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 the provisions of the statutory rules which have been framed under Article 309 and a number of decisions of the Courts.

4. We saw that Article 311 provides two protections to the government servants. The second protection granted by this Article is available in Clause 2 of the Article and it relates as to 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 these 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 includes, opportunity to know the charge, know the evidence led by the Disciplinary Authority in support of the charge, inspection of documents, leading evidence in defence, etc. 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 that the protection is available under any one of the under mentioned circumstances:

(a) Where there is a right to post
(b) Where there is visitation of evil consequences

6. 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.

7. 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. The circumstances under which the protection under Article 311 Clause 2 does not apply are as under:
(a) Where the penalty is being imposed on the ground of conduct which has led to his conviction on a criminal charge; or.

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

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

8. There may be circumstances wherein a Government servant may be proceeded against in a criminal court. The criminal case might have been filed by the employer or the employee might be tried for an offence he has committed in his private life. The provision mentioned at para 9(a) above, grants power to the disciplinary authority to impose penalty without conducting inquiry if the Government servant has been convicted in a criminal case. In this connection, it is relevant to note that the standard of proof required in a criminal case is proof beyond reasonable doubt whereas in the departmental proceedings, the standard of proof is preponderance of probability. Thus if an employee has been held guilty in a criminal case, it would be much more easier to establish the charge in a departmental proceedings. Conducting a departmental inquiry after the employee has been held guilty in a criminal case would, therefore, be an exercise in futility. Hence the power granted by the Second Proviso to Article 311 may be availed and appropriate penalty may imposed on the employee. It must, however, be noted that this provision only grants a power to the disciplinary authority to impose the penalty without inquiry when the employee has been convicted in a criminal case. It is not mandatory for the disciplinary authority to dismiss the employee when ever he has been convicted in a criminal case. The authority concerned will have to go thorough the judgement and take a decision depending upon the circumstances of the case.

9. Another occasion when the disciplinary authority may impose penalty on the employee without conducting any inquiry is when, the disciplinary authority, is satisfied, for reasons to be recorded, that it is not reasonably practicable to hold an inquiry. There are two conditions for invoking this provision viz. firstly, the disciplinary authority must be satisfied that it is not reasonably practicable to hold inquiry in a particular case and secondly, the authority must record the reasons for his decision. Although the constitution does not require the communication of the reasons in the penalty order, it has been recommended in the judgements of the Supreme Court that it is desirable to communicate the reasons in the penalty order. This will obviate the prospects of the penalised employee contending that the reasons were fabricated after the issue of penalty order. This provision can be of help during large scale violence, threat to the disciplinary authority or inquiry authority or the state witnesses, etc. Invoking this provision for mundane purposes such as avoiding delay, etc. may not be in order. Although the penalty order issued without inquiry may cause harm to the employee, the courts have held that the clause has been provided for the sake of a public good. On order to mitigate the harm done to the employee, the Hon’ble Supreme Court in the case of Union of India Vs Tulsiram Patel (AIR 1985 SC) has ruled that in all such cases his departmental appeal must be disposed of after giving him an opportunity of defence.

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

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.
Chapter 18

Discipline Rules:
Warning / Admonition / Reprimand

There may be occasions when a superior officer may find it necessary to criticize adversely his subordinate's work or call for an explanation bringing the defects to the notice and giving him an opportunity to explain. If the lapse is not serious enough, like negligence, carelessness, lack of thoroughness, etc., to justify the imposition of the formal punishment of censure, but calls for some formed action such as the communication of a written warning/admonition/reprimand, it may be administered and a copy of such a warning, etc., should be kept in the personal file of the subordinate.

Written warning, admonition or reprimands should not be administered or placed on record unless the authority is satisfied that there is good and sufficient reason to do so.

If in the reporting officer's opinion, despite the warning, etc., the official concerned has not improved, he may make appropriate mention against the relevant column in the Confidential Report. This will constitute an adverse entry and requires to be communicated.

Where a copy of the warning is also kept in the Confidential Report Dossier, it will be taken to constitute an adverse entry and the officer concerned has the right to represent against the same.

Warning should not be issued as a result of regular disciplinary proceedings. If it is found that some blame attaches to the official, then e penalty of censure at least should be imposed.

Warning is not a punishment and cannot be equated to a formal censure.- Para. 19.
Chapter 19

**DISCIPLINARY PROCEEDINGS: GENERAL PRINCIPLES**

The departmental inquiry is not only a formality, it is a serious proceeding intended to give the officer concerned (a charged officer) a last chance to prove his innocence. He should not treat it lightly. He may lose his job. It is quasi judicial in nature. It is not a ‘Criminal Trial’ and thus technicalities of the Criminal Law are not applicable to disciplinary proceedings. Where as criminal proceedings are based on ‘Beyond reasonable doubt’ the disciplinary proceedings are guided by ‘Preponderance of probability’. Thus Evidence Act is not strictly applicable in the departmental inquiries by administrative tribunals and quasi-judicial proceedings are duty-bound to act judicially, impartially and according to the Rule of Law.

2. The departmental inquiries are guided by two principles:- (i) Natural justice & (ii) Reasonable opportunity. No one shall be judged in his own cause & (iii) No decision shall be given without affording a reasonable hearing. The I.O. must act honestly and in good faith. I.O. must not adopt a procedure which is contrary to the rules of Natural Justice, if so, the ultimate decision is liable to be quashed.

**ORAL INQUIRY**

It is an important part of the disciplinary proceedings. The disciplinary Authority is under a statutory obligation to hold an inquiry in which the C.O. is informed in writing of the charges levelled against him and is given a reasonable opportunity to defend himself of the charges and is given a personal hearing. It is further intended to afford opportunity to the C. O. to default himself by cross-examining the witnesses produced against him and to produce witnesses and documents in support of his defence. The breach of the procedural guarantee will vitiate the entire proceedings.

2. Article 311 of the Constitution lays down that no person holding a civil post shall be dismissed, removed, compulsorily retired or reduced in rank, unless an inquiry is held and given a reasonable opportunity of being heard in respect of the charges.

3. The disciplinary Authority may either itself hold an oral inquiry into the charges which are not admitted by the C. O. or appoint an Inquiring Authority to hold the inquiry on its behalf. The Inquiring Authority thus becomes their nominee and hold the inquiry on behalf of the Disciplinary Authority. The Disciplinary Authority applies its own mind and decide as to whether the lapses on the part of the C. O. were blame worthy or he was innocent. But in the discharge of its functions, the inquiring Authority is not under the directions of the Disciplinary Authority. But the Inquiring Authority must not be related to the subject matter of inquiry and he should conduct the inquiry dispassionately, objectively and without bias. Justice should not only be done but should be seemed to have been done. It is desired that only disinterested officers should be appointed as Inquiry officers in departmental proceedings. Even outsiders can be entrusted the job of Inquiring Authority who are having special qualifications or experience. Administrative Reforms Commission recommended that
whole-time trained I. Os. should be appointed to conduct the oral Inquiries so that the inquiries are not unduly delayed. The unfamiliarity with the procedure or inadequate appreciation may lead to lack of firmness in dealing with dilatory tactics. This may also result in undue delays and faulty disposal of the case. A person who has an open mind is expected to conduct the inquiry in an objective manner. The Disciplinary Authority if it so desires, can hold the inquiry itself.

4. Inquiries against the Gazetted officers of all grades involving lack of integrity or an element of vigilance are only entrusted to commissioner for departmental Inquiry (CDI) under the Central Vigilance Commission – but not against non-gazetted officers. It is desired that inquiries against others should be conducted by an officer who is sufficiently senior to the officer whose conduct is being inquired into, as junior cannot command confidence. Only disinterested officers should be appointed as I. Os. An officer nominated as I. O. will be relieved of the other normal duties, as far as possible, to enable him to devote full attention to the completion of the inquiries. The I.O. can not rely on his own evidence. I. O. is no judge of merits as his report is only for the assistance of the Disciplinary Authority who has to arrive at his independent conclusion, after applying his mind. I. O. ‘s duty is to recommend as to which charges have been proved, partially proved and not proved. He is no body to recommend any penalty. I. O. is responsible to conduct a fair and impartial inquiry. His duties are more like a Magistrate or a judge holding a trail.

PRELIMINARIES AND PRELIMINARY HEARING (P. H.):

On receiving the order of appointment, the I. O. shall properly examine the formal order of his appointment to ensure that it has been signed by the authority to whom these powers have been delegated under the rules. Where the orders are to be signed in the name of the President, it has to be seen that the order has been issued for and on behalf of the President and has been properly authenticated under Article 77 (2) of the Constitution of India.

2. The Disciplinary Authority shall forward a copy of the articles of charge, statement of imputations of misconduct or misbehavior and a list of documents and witnesses by which the article of charges is proposed to be sustained. A written acknowledgement that the C. O. has received the charge sheet together with the articles of charge etc. a written statement of defence from the C. O. denying the charge, a copy of the order appointing the ‘Presenting officer’. In addition copies of Manuals, compilations should also be supplied to the I. O. for practical guidance.

3. Immediately on his appointment, the I. O. shall open a ‘Daily order Sheet’ which is a running record of all important events during the course of Inquiry and business transacted on each hearing. It should contain a brief statement of all oral and written representations by the C. O. and orders passed, record of business transacted and a record of orders passed by I. O. regarding holding hearings, adjournments, etc.

4. In the absence of Daily Order Sheet, it would be difficult as to whether the proper procedure was/adhered to. Entries in the daily order sheet shall be written by the I. O. himself and there-after copies of the Daily Order Sheet duly signed by all parties should be given to P. O. and C. O./Def Asstt.
VENUE OF INQUIRY

The guiding principle for fixing the place of inquiry is the place of convenience of the parties, i.e., where the C. O. was employed when the misconduct was committed & where oral as well as documentary evidence is most conveniently available. But there is no hard and fast rule and the I. O. can change the venue if the exigencies so require. It should also be ensured that the C. O., his defence assistant and witnesses are not prevented from attending the proceedings for want of payment of T. A. In one case (Ghanshyan Das V/S SC-68), where C. O. was under suspension and had not been paid subsistence allowance, the supreme court held that the nonappearance of the C. O. at a far off place of inquiry was justified.

NOTICE OF THE DATE, TIME AND VENUE OF INQUIRY:

The C. O. must be given a reasonable notice of holding the inquiry. The I. O. will send a notice to the C. O. asking him, (a) to present himself for Preliminary Hearing at the appointed place, date & time within 10 days, (b) to intimate the name of his defence assistants, and (c) the P. O. will also be informed about the date, time & place of P. H. The P. O. will bring with him copies of the statements of the listed witnesses and the listed documents. Natural justice is not violated if the place of inquiry is fixed by I. O. suo-moto.

PRELIMINARY HEARING (P. H.):

At the P. H., the I. O. will ask the C. O. thereon. The I.O. shall return a finding of guilt in respect of these articles of charge to which C. O. had pleaded not guilty. Holding of inquiry would be necessary, in case of those allegations which were denied by the C. O.

2. The I. O. will also ask the C.O.; (a) if he accepts the authenticity or genuineness of the listed documents accompanying the charge sheet (b) record admitted facts, (c) fix Regular Hearing (R. H.) on a date not later than 30 days. at a convenient place if either party fails to appear at the P. H., the I. O. may proceed to fix date and place for R. H. and send intimation to the parties. The I. O. will also record an order that C. O. may for preparing his defence; (i) Inspect (followed or not at the various stages of inquiry within five days) listed documents (ii) Submit a list of witnesses to be examined on his behalf with their addresses indicating relevance of each witness, (iii) Intimate the additional documents the C. O. would like to produce for his defence indicating relevance of each document. (iv) Name, designation and address of the defence assistant. In case, C. O. had been allowed the assistance of a legal practitioner by the disciplinary Authority, his name and address should be intimated, together, with a copy of the permission. These requirements should be completed before R. H. begins.

3. If the C. O. fails to indicate the relevance of additional documents or defence witness, the I. O. may reject the request in writing examining witness or requisitioning additional documents. But if he finds that the witnesses are relevant, they will be summoned and examined. Similarly, if the documents asked for by the C. O. are relevant, the I. O. will arrange for these additional documents to be shown to C. O.
sometimes even then I. O. has decided to call for documents, the custodian of these
documents may decide that the production of these documents would be against
public interest or security of the state. In every case, where it is decided to refuse
access to any official documents, the reasons for such refusal should be cogent and
substantial and invariably recorded in writing.

INSPECTION OF DOCUMENTS:

The C. O. will be given facilities to inspect the documents in the presence of
P.O. or C. O. can keep notes or extracts but it would be ensured that documents are
not tampered with during the course of inspection. C. O. will not be allowed to take
photostat copies. Supreme Court and High Courts in their various judgements had
decided that the C. O. is entitled to inspect under-mentioned records:

(i) FIR, (ii) copies of previous statements of witnesses, (iii) copy of the
preliminary inquiry, (iv) copies of the reports forming basis of charges, (v) evidence -
oral or documentary forming basis of the decisions, (vi) C. R. if the charge is failure to
show any improvement in work, & (vii) Relevant official records considered essential
for his defence.

2. Recently it has been decided that copies of the various listed documents be
supplied to the C. O. along with the charge sheet. While taking extracts, the C. O. may
take such notes either in ink or in pencil as he likes. Inspection of documents is
allowed, during the course of inquiry and after P. H. has been held by I.O. before R. H.
begins (Raizada Trilok Nath case SC 60, & State of Punjab V/S Bhagat Ram SC 74).

REGULAR HEARING (R. H.):

After the preliminaries are over and the C. O. has completed the inspection of
documents, the I. O. will hold R. H. in order to record documentary & oral evidence
on the fixed date. Once a R. H. starts, the case is heard on day to day basis which is fair
to both the parties. The C. O. ‘s agony should not be allowed to waste public money
and time by applying dilatory tactics. Normally, there should not be any adjournment
except for illness supported by Medical Certificate or on account of unavoidable and
adequate reason. Documents are proved through witnesses who identify them.

ADMITTED DOCUMENTS and facts can be taken note of straightway. Tape
recorded evidence is an admissible evidence. Prosecution should produce the evidence
first. P. O. should introduce those documents which are not admitted. The witnesses
would be examined in a logical and understandable order, without putting leading
questions- suggesting a definite answer. After the examination is over, the witness
may be ‘cross – examined’ by the C. O. or his defence assistant, in order to remove
discrepancy, if any, or to prove the reliability. It is also the duty of the I. O. to see that
witnesses understand the question properly and to protect them against any unfair
treatment. He should disallow questions if the cross-examination is irrelevant. After
the cross-examination P. O. can re-examine the witness on any points. In that case, the
other party will have right to further cross-examination. If at any stage, a party wishes
to cross-examine his own witness, he can do so with the permission of I. O. The I. O.
may put such question to a witness as he thinks fit to bring out the truth so that he has
a fair and clear understanding of the whole case. At any time during the inquiry, the
C. O. may decide to plead guilty. I. O. may accept the plea and record his findings.
Before the close of the case, if the P.O. produces a new evidence not included in the list of documents, the C.O. will be entitled to have a copy of such lists and opportunity to inspect the documents be given to the C.O. But it would not be correct to produce further evidence to fill up any gap in evidence. It can be done if there is any inherent lacuna or defect in the evidence.

After closure of the case for D. A., I. O. will ask the C. O. to state his defence and produce witnesses. If C. O. submits his defence in writing, it should be signed. C.O. cannot be compelled to give his evidence. At the end of the case, I. O. shall examine C. O. generally to enable him to explain any circumstances appearing against him.

On completion of evidence of both sides, I. O. should proceed to hear the arguments. P. O. shall be given not more than two days to present his brief. While presenting his brief, he (P. O.) should certify that a copy of the brief has been given to C.O. C.O. should be given two days for filling his brief.

All evidence depositions will be taken in a narrative form to the dictation of I.O. The depositions of each witness will be on a separate sheet of paper. The name of the witness and sufficient information, his name, age, designation and residence etc. for complete identification. Generally depositions of state or defence witnesses- SW, SW2, - or DW1, DW2, etc. and Exhibits will be numbered S-1, S-2 or DW-1, DW-2, etc. I. O. will also record a certificate at the end of each deposition as ‘Read over in the presence of the witnesses’. The witness shall sign each page of deposition. If the witness refuses to sign, I. O. will record this fact and sign.

I. O. will maintain a ‘Daily Order Sheet’ to record in brief the business transacted on each day of hearing. If I. O. feels it necessary to amend the charge sheet, he may do so provided a fresh opportunity is given to the C. O. to explain the charges. The I. O. can express his findings whether the misconduct is proved or not. If the C. O. does not submit his written statement of defence within the specified period or does not appear before I. O. or refuses to comply with the provisions of the rules, the I. O. may call the inquiry ‘Expert’.

If the I. O. is changed in the middle or is transferred, then it is the discretion of the new I. O. to hear the case de novo or from the stage at which it had reached. Disciplinary proceedings should not be stayed except under the orders of a Court/CAT or under the written orders of the D. A. where the veracity of a M. C. is doubted, the sound principle is to examine the Doctor who had issued the Certificate. (National Eng. Co. V/S Hanuman SC 67).

A competent witness is he who has personal knowledge of the matter. Evidence of all witnesses should be recorded in the presence of the C. O. (Union of India V/S T. R. Verma SC57). Affidavits may be accepted as an evidence in Departmental Inquiries. Asking searching questions from the C. O. at great length would vitiate inquiry (Chandukuthy case 68).

Right to ‘Cross-examination’ is a very valuable right. Prevention by the I. O. would vitiate the proceedings. (Kashi Prasad Case 75).
CROSS EXAMINATION:

The technique is learnt by practice only possessing vast and varied experience. Wellman states, “It requires the greatest ingenuity, logical through, clear perception, patience and self-control and power to read men’s mind, to judge the character by their faces, to appreciate their motive, ability to act with force and precision, and master-full knowledge of the subject matter to discover weak point in the witnesses under examination”.

Cross examiner should be courteous and polite to witness. He should not go unprepared.

HOSTILE WITNESS:-

Provisions of the Evidence Act are not applicable to Departmental Inquiries (Sreenivasaya V/S State of Mysore – 67). A witness cannot be declared as hostile because his evidence is against the party calling him. The inquiring authority must be satisfied that the witness is not willing to tell the truth (Sarju Prasad – Case 59).

EX PARTE PROCEEDINGS:

Occasions may arise when the C. O. fails or refuses to be present during the inquiry proceedings despite proper notice issued to him. How that inquiry should proceed. Rule 14 (20) of the CCS (CCA) Rules provide that if the C. O. to whom a copy of the articles of charge has been delivered and he does not submit his written statement of defence on or before the date specified or does not appear in person before the I. O. or otherwise fails to comply with or cooperate with the I. O. during the oral inquiry proceedings, the I. O. may hold the inquiry ex parte. But the I. O. has got no justification to proceed ex parte if the charge sheet has not been delivered to the C. O. Secondly, the C. O. should be provided reasonable opportunity to be heard. Thirdly in Departmental proceedings, hearing the party in the absence of the other would violate the principles of natural justice, (Rajendra Kumar’s case - 66).

Ex parte proceedings shall be justified:-

Where the C. O. does not appear before I. O. on the fixed date, where he asks for mercy without adducing any evidence, where he declines to take part in the proceedings and fails to remain present during inquiry and where the C. O. adopts a non-cooperative attitude. (HC Sarin – SC 76).

Cases are there where the C. O. chooses to withdraw on flimsy grounds and the management was bent upon mid-missing him (Mehboob Case – 64) and where the I. O. asked the witness to sign certain papers connected with the inquiry. Cases are there where the C. O. was refused to engage a legal practitioner (K. N. Gupta Case – 68) and he was not allowed access to additional documents. Non-cooperation may be non-attending the inquiry proceedings, attending proceedings but no cooperating, and attending but creating hurdles in the proceedings.

I. Os are advised to proceed ex-parte very cautiously and only where they find that the C. O. was under suspension and had not been paid subsistence allowance for
nine months, he expressed his inability to attend inquiry held at a place 500 Kms away because of paucity of funds. (H. L. Sethi, V/S M. C. Simla – 82).

In ex-parte proceedings case, the inquiry has still to be held in accordance with the rules. Regular hearings shall be fixed by I. O. and intimation shall be sent to C. O. The C. O. may appear and participate in the proceedings, at any stage but proceedings already taken shall not be repeated. Copies of the depositions examined in his absence may be supplied to him. Where the C. O. chooses willfully not to cooperate with I. O., records of the case prepared at each hearing in his absence will be sent to the C. O. regularly.

The findings in an ex parte proceedings shall be based on evidence – oral and documentary. If case can be proved by documents only, the I. O. may not examine either the prosecution or defence witnesses. (Roshan Lal Bagga’s case CAT – 1986).

“EVALUATION OF EVIDENCE”

After recording the evidence, the I.O. should assess the prosecution and defence evidence and draw up inferences from such assessment. He has to apply his mind to each place of evidence to adjudge its worth and to co-relate them from totality of circumstances. It is a judicial process. Though Indian evidence act is not applicable to departmental inquiries but its provisions have to be noticed, not with that rigour as they apply in criminal proceedings.

It is the duty of the I. O. to report to the D. A. whether the articles of charge have been Proved, disproved, not proved or partially proved. Standard of proof in Departmental Disciplinary proceedings is preponderance of probability and not beyond reasonable doubt. (Sardar Bahadur’s Case SC – 72). Where the basic facts are not proved, there is no question of weighing probabilities. The case will fall in the category of ‘no evidence’ and hence charge not proved – (Union of India V/S H. C. Voo 1, SC 64). It would be seen that the basic facts were not/cannot take the place of proof even in domestic inquiries – (Nand Kishore V/S State of Bihar SC-78). Even surmiser cannot constitute basis for proof. (Swaran Singh’s case SC 57).

When a person is bound to prove the existence of any fact, the burden of proof lies on him. I. O. should understand that a charge has to be proved against the C. O. and it is not for the C. O. to absolve himself from the charge. Unless the articles of charge are proved, the C. O. remains innocent in the eyes of law. Care should be taken that the innocent is not punished. (Union of India V/S H. C. Goel 64).

Presumptions cannot be drawn for filling up gaps in evidence. Departmental inquiry is not an empty formality, it is a serious proceedings intended to give the C. O. a chance to prove his innocence. Hearsay evidence is no evidence and is not admissible in departmental inquiries. (J. P. Sharma’s case SC-61). The context and circumstances of the evidence should be corroborated by direct evidence.

MATERIAL EVIDENCE in a case in the oral or documentary evidence which is essential in deciding the case and such evidence should be produced during the inquiry. Where the allegation is that a particular employee was found sleeping during duty, the person who actually saw him sleeping & reported the matter is a material
witness. Oral evidence must be direct. The investigating officer is not a material witness and no case should be decided on the basis of his evidence. Where there are apparent contradictions in the statement of a witness, the evidence has to be appreciated very cautiously and the whole testimony may be disregarded if the I. O. finds that the points of contradictions have not been explained satisfactorily. (Jivan Ram Case – 65). An Eye witness is a material witness in a case, hence his evidence is very valuable. His presence at the place of occurrence should be proved beyond reasonable doubt. An accomplice is a competent witness against a co-accused, corroboration in material particulars is generally insisted upon to result in conviction. The confession of a co-accused is, however, a very weak type of evidence and requires corroboration in material particulars.

The functions of the I. O. is to find out the truth in a case and P.O. and assisting Officer are duty bound to help him to achieve his aim. I. O’s examination of complaint does not render the complaint totally in admissible in Departmental Inquiries (Rukhiben Mutji’s Case-53). The complaint itself is of a hearsay character, it has no evidentiary value.

‘Circumstantial evidence’ is the evidence which does not prove the existence or non-existence of the principal fact by direct evidence. Disobedience of an order lawfully made is a serious misconduct. A lawful order is one which falls within the scope of duties as laid down by his conditions of service. The order must be conveyed to the employee, it is none of his business to sit in judgement over its propriety. Unreasonableness of an order is no ground for its disobedience (Turner V/S. Masson), for a sufficient ground for dismissal.

In-subordination is an act subversive of discipline. Where insubordination is alleged on the basis of some document, it is essential that the document is examined during the inquiry, and if challenged, it is also duly proved. In departmental inquiries, the standard of proof is ‘preponderance of probabilities’ (Sardar Bahadur’s case SC-72), whose requirements are satisfied, if the guilt of insubordination is brought home sufficiently by direct evidence or eye witness even though the superior officer concerned is not examined.

For justifying a misconduct principle of provocation is inadmissible. No misconduct can be justified on the plea that some grievance of the employee had not been redressed. An employee was dismissed for slapping a superior officer, the Supreme Court rejected the defence that he had been provoked. (The officer called him a big fool). Minor incidents should be ignored but the employee had a just reason to be provoked.

REPORT OF THE INQUIRY OFFICER:

At the close of the oral inquiry, it is obligation for the I. O. to consider the entire record of the case and to submit its report to the Disciplinary Authority. The report must be based on the record of Inquiry, but no material which did not come up during the course of inquiry should be made use of by the I. O. While writing report I. O. should not collect any material from outside source. The I. O. is rather duty-bound not to omit any material brought on the record during the course of inquiry. The conclusions reached by I. O. must float logically, out of the evidence or record, (Golam Mohiuddin case – 64). The I. O report must contain reasons for his findings. Normally,
the findings of the I. O. are restricted to the articles of charge conveyed to C. O., I. O. need not make any recommendations as to the punishment to be imposed on the C. O. Neither the findings nor the recommendations are bindings on the Government. JANN Dsilva V/S Union of India.

Report of the I. O. should be in narrative from, introductory, appointing I. O., broad features of the case and articles of charge, statement of facts which were admitted, a brief statement of the case of defence, list of evidence adducted and findings of the I. O. with reasons for the conclusions.
Chapter 20

COMPLAINTS

DEFINITION

Receipt of information about corruption, malpractice or misconduct on the part of public servants, from whatever source, would be termed as a complaint.

SOURCES OF COMPLAINT

Information about corruption, malpractice or misconduct on the part of public servants may flow to the administrative authority/ the CVC/the CBI/the police authorities from any of the following sources:

(a) Complaints received from employees of the organisation or from the public;
(b) Departmental inspection reports and stock verification surveys;
(c) Scrutiny of annual property statements;
(d) Scrutiny of transactions reported under the Conduct Rules;
(e) Reports of irregularities in accounts detected in the routine audit of accounts; e.g. tampering with records, over-payments, misappropriation of money or materials, etc.;
(f) Audit reports on Government accounts and on the accounts of public undertakings and other corporate bodies etc.;
(g) Reports of Parliamentary Committees like the Estimates Committee, Public Accounts Committee and the Committee on Public Undertakings;
(h) Proceedings of two Houses of Parliament;
(i) Complaints and allegations appearing in the press etc.;
(j) Source information, if received verbally from an identifiable source, to be reduced in writing; and
(k) Intelligence gathered by agencies like CBI, local bodies, etc.

In addition, the Chief Vigilance Officer concerned may also devise and adopt such methods, as considered appropriate and fruitful in the context of nature of work handled in the organisation, for collecting intelligence about any malpractice and misconduct among the employees.

COMPLAINTS RECEIVED FROM SUBORDINATE OFFICIALS

While normally a public servant is required to address communications through proper official channel, there is no objection in entertaining a direct complaint or communication from him giving information about corruption or other kinds of malpractice. While genuine complainants should be afforded protection against harassment or victimization, serious notice should be taken if a complaint, after verification, is found to be false and malicious. There should be no hesitation in taking severe departmental action or launching criminal prosecution against such complainants.
INITIAL ACTION ON COMPLAINTS RECEIVED BY MINISTRIES/DEPARTMENTS ETC.

Every Vigilance Section/Unit will maintain a vigilance complaints register in Form CVO-1, in two separate parts for category ‘A’ and category ‘B’ employees. Category ‘A’ includes such employees against whom Commission’s advice is required whereas category ‘B’ includes such employees against whom Commission’s advice is not required. If a complaint involves both categories of employees, it should be shown against the higher category, i.e. category ‘A’.

Every complaint, irrespective of its source, would be entered in the prescribed format in the complaints register chronologically as it is received or taken notice of. A complaint containing allegations against several officers may be treated as one complaint for the purpose of statistical returns.

Entries of only those complaints in which there is an allegation of corruption or improper motive; or if the alleged facts prima facie indicate an element or potentiality of a vigilance angle should be made in the register. Complaints, which relate to purely administrative matters or technical lapses, such as late attendance, disobedience, insubordination, negligence, lack of supervision or operational or technical irregularities, etc. should not be entered in the register and should be dealt with separately under “non-vigilance complaints”.

A complaint against an employee of a public sector enterprise or an autonomous organisation may be received in the administrative Ministry concerned and also in the Central Vigilance Commission. Such complaints will normally be sent for inquiry to the organisation in which the employee concerned is employed and should be entered in the vigilance complaints register of that organisation only. Such complaints should not be entered in the vigilance complaints register of the administrative Ministry in order to avoid duplication of entries and inflation of statistics, except in cases in which, for any special reason, it is proposed to deal with the matter in the Ministry itself without consulting the employing organisation.

CVO-1

C.V.O. Register 1 of complaints to be maintained in separate columns for category A and Category B employees.

<table>
<thead>
<tr>
<th>A.No.</th>
<th>Source of Complaint (See N.B.1)</th>
<th>Date of receipt</th>
<th>Name and designation of officers(s) complained against.</th>
<th>Reference to file No.</th>
<th>Action taken (See N.B.2)</th>
<th>Date of action</th>
<th>Remarks (See N.B.3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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</tr>
</tbody>
</table>
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 CVO by CVC, and CBI, 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(c) Taken up for investigation by departmental vigilance agency.

3. Remarks Cloumn 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.

SCRUTINY OF COMPLAINTS

Each complaint will be examined by the chief vigilance officer to see whether there is any substance in the allegations made in it to merit looking into. Where the allegations are vague and general and prima facie unverifiable, the chief vigilance officer may decide, with the approval of the head of his department, where considered necessary, that no action is necessary and the complaint should be dropped and filed. Where the complaint seems to give information definite enough to require a further check, a preliminary inquiry/ investigation will need to be made to verify the allegations so as to decide whether, or not, the public servant concerned should be proceeded against departmentally or in a court of law or both. If considered necessary, the chief vigilance officer may have a quick look into the relevant records and examine them to satisfy himself about the need for further inquiry into the allegations made in the complaint. The information passed on by the CBI to the Ministry/ Department regarding the conduct of any of its officers should also be treated in the same way.

DISPOSAL OF COMPLAINTS

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

(i) file it without or after investigation; or (ii) to pass it on to the CBI for investigation/appropriate action; or (iii) to pass it on to the concerned administrative authority for appropriate action on the ground that no vigilance angle is involved; or (iv) to take up for detailed investigation by the departmental vigilance agency. An entry to that effect would be made in columns 6 and 7 of the vigilance complaint register with regard to “action taken” and “date of action” respectively. A Complaint will be treated as disposed of monthly/annual returns either on issue of charge-sheet or final decision for closing or dropping the complaint. If a complaint is taken up for investigation by the departmental vigilance agency, or in cases in which it is decided to initiate departmental proceedings or criminal prosecution, further progress would be watched through other relevant registers. If there were previous cases/complaints against the same officer, it should be indicated in the remarks column, i.e. column 8.
COMPLAINTS RECEIVED IN THE CENTRAL VIGILANCE COMMISSION

Complaints received in the Central Vigilance Commission will be registered and examined initially in the Commission. The Commission may decide, according to the nature of each complaint, that (i) it does not merit any action and may be filed, or (ii) it should be sent to the administrative Ministry/Department concerned for disposal, or for inquiry and report, or (iii) it should be sent to the Central Bureau of Investigation for secret verification or detailed investigation, or (iv) the Commission itself should undertake the inquiry.

ACTION ON ANONYMOUS/ PSEUDONYMOUS COMPLAINTS

The Commission has issued instructions that no action is to be taken by the administrative authorities, as a general rule, on anonymous/pseudonymous complaints received by them. When in doubt, the pseudonymous character of a complaint may be verified by enquiring from the signatory of the complaint whether it had actually been sent by him. If he cannot be contacted at the address given in the complaint, or if no reply is received from him within a reasonable time, it should be presumed that the complaint is pseudonymous and should accordingly be ignored. However, if any department/organisation proposes to look into any verifiable facts alleged in such complaints, it may refer the matter to the Commission seeking its concurrence through the CVO or the head of the organisation, irrespective of the level of employees involved therein.

Although, the Commission would normally also not pursue anonymous/pseudonymous complaints, yet it has not precluded itself from taking cognizance of any complaint on which action is warranted. In the event of the Commission deciding to make an inquiry into an anonymous or pseudonymous complaint, the CVO concerned, advised to look into the complaint, should make necessary investigation and report the results of investigation to the Commission for further course of action to be taken. Such complaint should be treated as a reference received from the Central Vigilance Commission and should be entered as such in the vigilance complaints register and in the returns made to the Commission.

Where the Commission asks for an inquiry and report considering that the complaint is from an identifiable person, but it turns out to be pseudonymous, the administrative authority may bring the fact to the notice of the Commission and seek instructions whether the matter is to be pursued further. The Commission will consider and advise whether, notwithstanding the complaint being pseudonymous, the matter merits being pursued.

Sometimes, the administrative authority may conduct investigation into a pseudonymous complaint under the belief that it is a genuine signed complaint, or for any other reason. The Commission need not be consulted if it is found that the allegations are without any substance. But if the investigation indicates, prima facie, that there is some substance in the allegations, the Commission should be consulted as to the further course of action to be taken if it pertains to category “A” employee.
CO-OPERATION OF VOLUNTARY PUBLIC ORGANISATIONS PRESS AND RESPONSIBLE CITIZENS IN COMBATING CORRUPTION

Co-operation of responsible voluntary public organisations in combating corruption should be welcome. No distinction should, however, be made between one organisation and another; nor should any organisation be given any priority or preference over others. Where a public organisation furnishes any information in confidence, the confidence should be respected. However, the identity and, if necessary, the antecedents of a person, who lodges a complaint on behalf of a public organisation, may be verified before action is initiated.

Private voluntary organisations or individuals should not be authorized to receive complaints on behalf of administrative authorities as such authorization will amount to treating them to that extent, as functionaries of the administrative set-up.

GOI RESOLUTION ON PUBLIC INTEREST DISCLOSURE AND PROTECTION OF INFORMER

The Government of India has authorized the Central Vigilance Commission (CVC) as the ‘Designated Agency’ to receive written complaints for disclosure on any allegation of corruption or misuse of office and recommend appropriate action.

The jurisdiction of the Commission in this regard would be restricted to any employee of the Central Government or of any corporation established by or under any Central Act, government companies, societies or local authorities owned or controlled by the Central Government. Personnel employed by the State Governments and activities of the State Governments or its Corporations etc. will not come under the purview of the Commission.

In this regard, the Commission, which will accept such complaints, has the responsibility of keeping the identity of the complainant secret. Hence, it is informed to the general public that any complaint, which is to be made under this resolution should comply with the following aspects:

(i) The complaint should be in a closed/secured envelope.
(ii) The envelope should be addressed to Secretary, Central Vigilance Commission and should be superscribed “Complaint under The Public Interest Disclosure”. If the envelope is not superscribed and closed, it will not be possible for the Commission to protect the complainant under the above resolution and the complaint will be dealt with as per the normal complaint policy of the Commission. The complainant should give his/her name and address in the beginning or end of complaint or in an attached letter.
(iii) Commission will not entertain anonymous/pseudonymous complaints.
(iv) The text of the complaint should be carefully drafted so as not to give any details or clue as to his/her identity. However, the details of the complaint should be specific and verifiable.
(v) In order to protect identity of the person, the Commission will not issue any acknowledgement and the whistle-blowers are advised not to enter into any further correspondence with the Commission in their own interest. The Commission assure that, subject to the facts of the case being verifiable, it will take the necessary action, as
provided under the Government of India Resolution mentioned above. If any further clarification is required, the Commission will get in touch with the complainant.

The Commission can also take action against complainants making motivated/vexatious complaints under this Resolution.
Chapter 21

SUSPENSION

SUSPENSION AND ITS EFFECT ON SERVICE MATTERS

Suspension is an executive action against an employee for acts of misconduct, delinquency, misdemeanour, etc., through which the employee is temporarily refrained from attending to office and duties attached to it, till a final action is taken against him.

Purpose of Suspension

Suspension is a safeguard against interference by the employee to hamper the enquiry or tamper with evidence and in case of allegations involving moral turpitude it may not be in keeping with the image a public servant should have. Besides, it provides the employee the needed time to prepare, adequately for the enquiry and vindicate his integrity.

Effect of Suspension

(i) Suspension though not a punishment and does not amount to ‘reduction in rank’ (the employee retains lien on his permanent post), it causes a lasting damage to employee’s reputation.

(ii) The employee is put to hardship as he is neither allowed to perform his legitimate duties nor earns his salary (he is paid subsistence allowance only). He is not allowed to supplement his subsistence allowance as he continues to be-

   (a) in the service he belongs to,
   (b) subject to discipline, penalties and conduct rules, and
   (c) bound to follow lawful directions of his superiors.

Opportunity to Explain

The employee need not be given an opportunity to explain the circumstances on the basis of which he is required to be suspended.

However, utmost caution and circumspection should be exercised in passing an order of suspension and discretion to order suspension should be sparingly used only for valid reasons. When the employee continues to remain absent from duty or overstays leave without permission and his movements are unknown, the employee should not be suspended, but the period of absence should be treated as dies non and other actions should be taken.

When to Suspend-

An employee can be suspended when-
(i) disciplinary action against him is contemplated or pending; or
(ii) a case against him in respect of criminal offence is under investigation, inquiry or trial (including when an employee is arrested on a criminal charge but not actually detained i.e., released on bail.); or

(iii) he has engaged himself in activities prejudicial to the security of the State.

Note: An employee must report the fact of his arrest and/or release on bail, etc. immediately to his superior. Failure to do so will attract disciplinary action.

**Guiding Principles for Ordering Suspension**

The disciplinary authority may consider it, appropriate to order suspension in following cases-

(i) Where employee’s presence in office-
   (a) will prejudice the investigation/trial/enquiry;
   (b) is likely to seriously subvert discipline in the office;
   (c) will be against wider public interest and his suspension would demonstrate the policies of Government to deal with officers involved in the cases of scandals/corruption.

(ii) Where from preliminary enquiry it is expected that the employee may be convicted and/or removed/dismissed/compulsorily retired at the end of disciplinary proceedings.

(iii) Where the employee is suspected to have engaged himself in activities prejudicial to the interest of security of the State.

(iv) Besides, following types of misdemeanour will call for suspension
   (a) any offence/conduct involving moral turpitude,
   (b) corruption/embezzlement or misappropriation of Government money,
   (c) possession of disproportionate assets,
   (d) misuse of official position for personal gain,
   (e) serious negligence and dereliction of duty resulting in considerable loss to Government,
   (f) desertion of duty, and
   (g) refusal/deliberate failure to carry out written order of the superior.

(v) Where on registration of a police case in relation to a ‘dowry death’
   (a) the employee is arrested in connection with such case, or
   (b) though the employee is not arrested, the police report indicates that the offence has been committed by the employee.

(vi) If an employee is arrested but not detained and the charge is related to his official position, he shall be placed under suspension unless there are exceptional reasons for not doing so.

(vii) An employee arrested for being in debt, but not detained can be placed under suspension if disciplinary action is contemplated against him.
Deemed Suspension

An employee shall be deemed to have been suspended-

(i) with effect from the date of detention, if detained in custody for more than 48 hours,

(ii) with effect from the date of conviction, if sentenced for imprisonment for more than 48 hours (if not already removed/dismissed/compulsorily retired),

(iii) with effect from the date of order of dismissal/removal/compulsory retirement-

    (a) in case such order has been set aside in appeal/revision and the case is remitted for further enquiry/action, or

    (b) in case such order has been set aside by a court of law (on technical grounds without going into merits of the case) and the disciplinary authority decides to hold further enquiry on the same allegations.

Note: A further enquiry may be ordered where some fresh material has come to light which was not before the court.

Other Conditions governing Suspension

(i) Suspension or deemed suspension shall continue until it is modified/revoked.

(ii) If any other disciplinary proceeding is started against an employee during suspension, he may be kept under suspension till all proceedings are over. A separate order to this effect shall be passed, so that in the event of reinstatement the facts of the later case can also be taken into account while regulating the period of suspension.

(iii) Suspension/deemed suspension can be modified or revoked by the suspending authority or his superiors.

(iv) Before suspension, it should be considered whether the purpose can be served by transferring the employee.

(v) Reasons for suspension should be recorded.

(vi) When an employee deemed to be under suspension is released from custody, it should be considered whether continuation of suspension is necessary.

(vii) In cases of deemed suspension, it is desirable for purpose of administrative record to issue formal order.

Orders of Suspension

1. An employee can be placed under suspension only by a specific order made in writing by the competent authority.

2. The suspension order or subsequent order revoking suspension should be properly and correctly worded.
3. Cases of suspension should periodically be reviewed and when it is not necessary to keep an official further under suspension, competent authority should revoke the suspension order and reinstate him in service.

**Date of Effect of Suspension**

(i) Except in cases of deemed suspension, an order of suspension takes effect from the date it is made and not from a retrospective date.

(ii) Where an employee has performed his prescribed hours of duty on any particular day, suspension can be effective from the subsequent day.

(iii) If the employee is stationed at a place other than his headquarters, or is on tour, suspension shall be effective from the date of receipt of orders by the employee or the date specified by the suspending authority.

(iv) Where the employee is holding charge of stores and/or cash, the date of suspension will be specified considering the time necessary for checking and verification of stores and/or cash.

(v) An order of suspension or deemed suspension shall continue to remain in force until it is revoked, or the employee is dismissed or when the proceedings against the employee terminate by his acquittal/discharge.

**Competent Authority to Order Suspension**

(i) The employee can be placed under suspension by

   (a) the appointing authority,
   (b) any authority to which appointing authority is subordinate,
   (c) disciplinary authority,
   (d) any authority empowered by the President.

(ii) Supervisory officers in field offices located outside headquarters may be empowered to suspend subordinates in cases involving gross dereliction of duties (but he must report it to higher authority and the order must be confirmed by the reviewing authority within one month).

(iii) Higher authority can direct the suspending authority to place his subordinate under suspension.

   However, it would be more appropriate if the higher authority merely makes a suggestion to the suspending authority as to the desirability of taking disciplinary action against the concerned employee.

(iv) In case of a deputationist, the borrowing authority shall have the powers of appointing authority to place him under suspension and shall simultaneously inform the lending authority.
Follow up Action on Suspension

(i) Period of suspension should be barest minimum.

(ii) Chargesheet must be filed in a court (in cases of prosecution) or served within three months. If it cannot be done revocation of suspension order should be considered and the employee may be transferred if he is likely to tamper with the evidence. Besides, the matter should be reported to the higher authority with reasons for the delay.

(iii) In cases other than those pending in courts, the total period of suspension, viz. both in respect of investigation and disciplinary proceedings, should not ordinarily exceed 6 months. Incase of delay the reasons for the same should be reported to the higher authority.

(iv) If the chargesheet cannot be issued within three months, the reasons for suspension should be communicated to the employee immediately and the employee can (except when engaged in acts against security of the state) appeal within 45 days of the communication.

(v) Suspended employee should not be compelled to attend office and mark attendance.

(vi) Suspended employee should not be allowed free access to office.

Review of Suspension

An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority competent to modify or revoke the suspension, before expiry of ninety days from the effective date of suspension, on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

An order of suspension made or deemed to have been made under sub-rule (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days:

Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under suspension at the time of completion of ninety days of suspension and the ninety days period in such case will count from the date the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later.”

Revocation of Suspension

1. An order of suspension or deemed suspension may, at any time be revoked by the competent authority. i.e. by the authority who made the order of
suspension or by the appointing authority or by any authority to which it is subordinate.

2. In cases where investigation is likely to take more time, revocation of the suspension order should be considered and if necessary the employee may be transferred on revocation.

**Headquarters of Suspended Employee**

(i) Normally the headquarters of suspended employee will be his last place of duty before suspension.

(ii) He cannot leave headquarters without permission.

(iii) The competent authority can change the headquarters, at the request of the employee, if -

   (a) no additional expenses to Govt. are involved, and
   (b) there would be no difficulty in investigation of allegations against him.

(iv) While fixing headquarters, restrictions, if any, imposed by the court should be considered.

**Leave During Suspension**

It is not permissible to grant leave to a Government servant under suspension under FR 55.

**Forwarding of Applications for Foreign Assignments/Deputation**

Applications of employees under suspension or against whom disciplinary proceedings are contemplated should neither be forwarded nor should he be released for deputation/foreign service/scholarship/fellowship/training.

Where the case is yet under investigation and has not reached the stage when a prima facie case can be said to be made out against the employee, the application, may be forwarded with a note on the nature of allegations.

**Departmental Examinations**

(i) The employee under suspension can be allowed to appear in departmental examination.

(ii) If he passes the examination, he can be promoted only after his exoneration of the charge against him.

(iii) During currency of a penalty (other than censure) the employee cannot be promoted.

(iv) When promoted, his seniority will be based on the rank obtained in the competitive examination.
Eligibility to Function as Defence Counsel

If services of an employee under suspension are required by an accused to function as his defence counsel in disciplinary proceedings, the employee may be allowed to do so.

ACRs of Subordinates

An officer under suspension can write ACRs of his subordinates within two months of the date of his being placed under suspension, or within one month from the date the ACR has become due, whichever is later. He cannot write ACRs after the time limit prescribed above.

Promotion of Suspended Employee

(i) The fact of suspension/departmental proceedings or pending case in court against the employee shall be brought to the notice of Departmental Promotion Committee but the Committee shall not take into consideration this fact for judging the suitability of employee for promotion. DPC will consider the case of the employee on the merits in the usual manner and place the findings in a sealed cover.

(ii) If the employee is exonerated, sealed cover may be opened and acted upon:

   (a) If he is to be promoted, his date of promotion, entitlement of arrears etc. will be decided by the competent authority with reference to the position assigned in the findings kept in sealed cover and the date of promotion of his next junior.

   (b) If the employee is found guilty, sealed cover findings will not be acted upon and he will be considered for promotion by the next DPC.

(iii) The case of employee coming under “sealed cover procedure” must be reviewed comprehensively every six months.

(iv) Where the disciplinary case/investigation or prosecution continues for over two years and the DPC findings have been kept in sealed cover, the appointing authority may consider the employee for adhoc promotion in appropriate cases provided he is not under suspension.

(v) If after receipt of recommendation of DPC and before actual promotion, an employee is placed under suspension, his case will also be treated as a sealed cover case and shall not be promoted till completely exonerated.

(vi) If suspension adversely affects promotion due to lack of minimum required service and later suspension is found wholly unjustified, the period for which his junior has been promoted will be reckoned towards his minimum period of service. The same shall also apply in case of employees not suspended, but whose promotion is withheld on account of departmental proceedings/investigation.
Resignation during suspension

Resignation from a suspended employee can be accepted, if-

(i) the offence does not involve moral turpitude,

(ii) the quantum of evidence does not justify the assumption that employee will be removed/dismissed, or

(iii) the disciplinary proceedings are likely to be so protracted that acceptance of the employee's resignation would be cheaper,

(iv) the acceptance of resignation is considered necessary in the public interest, subject to prior approval of the Head of the Department in case of Group ‘C’ and ‘D’ employees and of the Minister-in-charge in case of Group ‘A’ and ‘B’ employees.

Voluntary Retirement during suspension

(i) Permission to retire can be withheld in case of an employee under suspension.

(ii) Permission to retire can be withheld even in cases where suspension is ordered after the employee has given notice for voluntary retirement.

Termination of Service of Suspended Employee

(i) If employee is temporary, suspension can be revoked and services can be terminated under Rule 5 of CCS (Temporary service) Rules, 1965.

(ii) If employee is permanent, services can be terminated only as a result of disciplinary proceedings.

Suspension Vacancy

(i) If the sanction for the temporary post of a suspended employee expires, the temporary post can be extended to enable the continuance of disciplinary proceedings against him.

(ii) Against suspension vacancy, a reservist can be posted or officiating appointment can be made and no extra post need be created.

Counting of Periods of Suspension

(i) If the employee under suspension is exonerated on conclusion of disciplinary proceeding or his suspension is held wholly unjustified the period of suspension will count as qualifying service.

(ii) If the employee is not exonerated, the period of suspension will not count unless the order specifically declares any such period as counting for qualifying service.

Marking of attendance by a suspended employee
The Hon’ble Andhra Pradesh High Court in the case of Zonal Manager, Food Corporation of India and others Vs. Khaled Ahmed Siddiqui [1982 Lab IC 1140], have held that a direction to the employee during the period of suspension, to attend office and mark attendance at the office daily during working hours is illegal.

**Rate of Subsistence allowance**

A suspended official is entitled for the first three months of suspension to subsistence allowance of an amount equal to leave salary on half pay: with appropriate Dearness and Compensatory allowances. Review should be, carried out after three months, and subsistence allowance can be increased by 50% if the delay is not on the part of the charged officer. If the delay is on the part of the charged officer, it can be reduced by 50% or less.

HRA, CCA appropriate to the subsistence allowance may be paid.

The charged officer should furnish non-employment certificate in every month.

**Conveyance Advance**

Already sanctioned will not be paid during the suspension period.

**HBA**

May be paid subject to production security, in the form of mortgage bond, from 2 permanent Govt. servants. Children Education Allowance is admissible.

**LTC**

Admissible to the family members

**Recoveries from Subsistence Allowance:**

*Permissible recoveries:* - IT, House Rent and allied charges, Re-payment of loans and advances, CGHS, CGEIS

*Optional:* - PLI, Co-operative dues, GPF advance.

*Non-permissible recoveries:* - GPF Subscriptions, Court attachment, recovery of loss of Govt. money to be recovered from the person concerned.

*With the Official’s written consent:* - PLI Premia, Co-operative stores/societies dues, refund of GPF advances.
Chapter 22

Sanction for Prosecution

Under section 19 of the Prevention of Corruption Act, 1988, it is necessary for the prosecuting authority to have the previous sanction of the appropriate administrative authority for launching prosecution against a public servant. For ready reference the text of the section is reproduced below:

“19. Previous sanction necessary for prosecution

(1) No court shall take cognizance of an offence punishable under section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction:

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office, save by or with the sanction of the Central Government and of the Central Government.

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from the office, save by or with sanction of State Government, of the State Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises whether the previous sanction as required under sub-section (1) should be given by the Central or State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

Prior to the enactment of the Prevention of Corruption Act, 1988, the prosecution of a public servant was subject to the provisions of section 197 (1) of the Code of Criminal Procedure, 1973. This section reads as follows:

SECTION 197 Cr.P.C.-Under section 197 (1) d the sanction of the Central or of a State Government was necessary for the prosecution of only such public servants as were not removable from their offices save with the sanction of the respective Government. No sanction is required under that section to prosecute a public servant removable by a lower authority. After the enactment of the Prevention of Corruption Act, 1947, the prosecution of any public servant, however, subordinate, who is alleged to have committed an offence under section 5 of that Act and /or under section 161, 164 and 165 of the Indian Penal Code requires the previous sanction of the appropriate administrative authority. But prosecution sanction is not required while prosecuting a Government servant who is removable without the sanction of the Government concerned, who is alleged to have committed an offence under section 409 I.P.C.

Need for Sanction:

The requirement of previous sanction is intended to afford a reasonable protection to a public servant, who in the course of strict and impartial discharge of his duties may offend persons and create enemies, from frivolous, malicious or vexatious
prosecution and to save him from unnecessary harassment or undue hardships which may result from an inadequate appreciation by police authorities of the technicalities of the working of a department. The prosecution of a Government servant for an offence challenging his honesty and integrity has also a bearing on the morale of the public services. The administrative authority alone is in a position to assess and weigh the accusation on the basis of the background of their own intimate knowledge of the work and conduct of the public servant and the overall administrative interest of the State.

The protection of previous sanction is available under section 6 of the Prevention of Corruption Act only to a person who was a public servant when the offence was committed and also when a court is asked to take cognizance of the offence. The provisions of the section will not be attracted if the accused was not at the time of the commission of the alleged offence a public servant but was merely expecting to be a public servant. Similarly, previous sanction under this section will not be required in the case of a person who was a public servant at the time of commission of the offence but who had ceased to be so at the time when the court was asked to take cognizance of it.

If the prior sanction of the competent authority is not obtained, the trial would be avoid ab initio and if commenced will have to be set aside. A fresh prosecution would be necessary after a proper sanction had been obtained and a charge sheet against the accused will need to be filed afresh for his trial for offences covered by the sanction.

**Sanction for prosecution under section 409, Indian Penal Code:**

If a public servant is charged under section 409 of the Indian Penal Code, the requirement of previous sanction as prescribed in section 6 of the Prevention of Corruption Act will not apply. However, if such accused public servant cannot be removed from his office except by an order of the Central or State Government, sanction for his prosecution will be required under section 197 of Criminal Procedure Code.

**Investigation by the Anti-Corruption Unit/CBI:**

As a general rule allegations involving offences punishable under section 13 of P.C. Act, 1988 and section and 409 of I.P.C. will be investigated, at the instance of administrative authority or as a result of information gathered through their own sources, by the Anti-Corruption Unit/CBI.

**Action after judgment and conviction:**

As soon as the judgment is pronounced a report about conviction will be sent by the Anti-Corruption Unit to Administrative Department concerned and to the Vigilance Department. The Anti-Corruption Unit will also take immediate steps to obtain a copy of the judgment and to forward copies of it to the authorities mentioned above. While doing so the Anti-Corruption Unit may give their comments, if any, on any matters arising out of the judgment.
As soon as the report about the conviction is received from the Anti-Corruption Unit and if it happens that the Government servant convicted had not been placed under suspension, the appropriate disciplinary authority should decide whether he should now be suspended. In cases where the conviction is for a term of imprisonment exceeding 48 hours, the Government servant shall be deemed to have been suspended under Rule 10(2) (b) of Central Civil Services (Classification, Control and Appeal) Rules, 1965. A formal order about such deemed suspension will be issued by the disciplinary authority for purpose of administrative record.

As soon as a copy of the judgment convicting the accused is received from Anti-Corruption Unit, the Vigilance Department would consider the course of further departmental action to be taken against the accused public servant and advise the appropriate disciplinary authority accordingly.

If the disciplinary authority after consultation with the Vigilance Department comes to the conclusion that the offence for which public servant has been convicted was such as to render his retention in the public service prima-facie undesirable, it can impose upon him under rule 19(i) of the C.C.S. (CCA) Rules, 1965, the penalty of dismissal or removal or compulsory retirement from service, as may be considered appropriate, with reference to the gravity of the offence, without holding any inquiry or giving him a show-cause notice as provided in proviso to Article 311 (2) of the Constitution.

In a case in which the offence for which a Government servant has been convicted is not considered such as to render his retention in public service prima-facie undesirable, the appropriate disciplinary authority after consultation with the Vigilance Department may impose any of the penalties, other than those of dismissal, removal or compulsory retirement from service. Specified in rule 11 of the C.C.C.(CCA) Rules, 1965, as may be considered appropriate, under rule 19 (i) of the Rules without holding any further inquiry or giving the public servant concerned a show-cause notice.

Action to impose any of the penalties referred to in paragraph above should not be taken before the period for filing an appeal has elapsed or, if an appeal has been filed, before the appeal has been decided in the first court of appeal. In counting the period for filing the appeal, time taken for getting the copies of court’s decision is not to be counted. The disciplinary authorities should make arrangement for getting the result of the first appeal very promptly and take due action thereafter without delay and without inquiring whether the Government servant concerned has or intends to file a second appeal. If, however, a restraining order from an appellant court is produced action has to be withheld or taken according to the court’s direction.

Consultation with Union Public Service Commission:

In cases where the Union Public Service Commission has to be consulted, a reference to the Commission should ordinarily be made after the period for filing an appeal has elapsed or if an appeal has been filed after the appeal has been decided in the first court of appeal.
However, in a case in which Government are legally advised that there is little chance of conviction being reversed in appeal, the reference to the Union Public Service Commission may be made without waiting for the expiry of the period for filing an appeal. The Commission may, however, suggest even in such a case that their advice may be sought only after the judgment of the first appellate court is known or after expiry of period of appeal, if no appeal has been filed.

**Action on acquittal:**

In cases in which a public servant is acquitted by the trial court, the judgment will be examined by the Anti-Corruption Unit in consultation with the Public Prosecutor concerned to consider whether an appeal or an application for revision should be filed in the first court of appeal. If the Anti-Corruption Unit comes to the conclusion that such an appeal or an application for revision should be filed, a copy of the judgment together with the copy of the comments of the Anti-Corruption Unit and Public Prosecutor concerned will be forwarded by them to the Vigilance Department. If the Vigilance Department agree with the recommendations of the Anti-Corruption Unit, then Vigilance Department will forward to the Government a certified copy of the judgment and its comments for filing an appeal or revision as the case may be. A copy of such reference will be endorsed by the Vigilance Department to the Anti-Corruption Unit. The administrative department may also be kept informed of the developments.

In the case of a Government servant who is under suspension and against whom acquittal an appeal or a revision has been, it may be considered whether it is necessary to continue him under suspension. If not, the order of suspension may be revoked immediately.

If the Government servant is acquitted by the first appellate court, the Vigilance Department will decide whether the acquittal should be challenged further in the higher court, and if it is so decided, action to institute proper proceedings will be taken by it.

If the conviction is upheld by the appellate court, further action should be taken as outlined above.

**Departmental action after acquittal:**

If the Government servant is acquitted by trial or appellate court and if it is decided that the acquittal should not be challenged in a higher court, the competent authority should decided in consultation with the Vigilance Department whether or not the facts and circumstances of the case are such as to call for a departmental enquiry on the basis of the allegations on which he was previously charged and convicted.

One identical set of facts and allegations may constitute a criminal offence as well as misconduct punishable under the C.C.S(CCA) Rules, or other corresponding rules. If the facts or allegations had been examined by a court of competent jurisdiction and if the court held that the allegations were not true, it will not be permissible to hold a departmental enquiry in respect of a charge based on the same facts or
allegations. If, on the other hand, the court has merely expressed a doubt about the correctness of the allegations, departmental enquiry may be held into the same allegations if better proof than what was produced before the court is forthcoming.

If the court has held that the allegations are proved but do not constitute the criminal offence with which the Government servant was charged, a departmental enquiry could be held on the basis of the same allegations if they are considered good and sufficient ground for departmental action. Departmental action could also be taken if the allegations were not examined by court e.g., the discharge of the accused on technical grounds without going into the merits of the allegations, but, if the allegations are considered good and sufficient for departmental action.

A departmental enquiry may be held after acquittal in respect of a charge which is not identical with or similar to the charge in the criminal case in the prescribed form.

**Withdrawal of prosecution:**

Once a case has been put in a court, it should be allowed to take its normal course. Proposal for withdrawal of prosecution may, however, be initiated by the Anti-Corruption Unit on legal considerations. In such cases the Anti-Corruption Unit will forward its recommendations to the Vigilance Department and to the administrative department concerned by which prosecution sanction was accorded. The Vigilance Department will consult the Law Department and will decide as to the further course of action in such cases.

Request for withdrawal of prosecution may also come up from the accused. Such request should not generally be entertained except in very exceptional cases where, for instance, attention is drawn to certain fresh, established or accepted facts which might alter the whole aspect of the case. In such cases also the administrative department concerned should consult the Law Department and their advice accepted.
Chapter 23

PENALTIES, DISCIPLINARY AUTHORITIES AND
AUTHORITY TO INSTITUTE PROCEEDINGS

Penalties(Rule 11 CCS (CCA) Rules, 1965)

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

Minor Penalties -

(i) censure;

(ii) withholding of his promotion;

(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;

(iii a) reduction to a lower stage in the time-scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.

(iv) withholding of increments of pay;

Major Penalties -

(v) save as provided for in clause (iii) (a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay

(vi) reduction to lower time-scale of pay, grade, post or Service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time-scale of pay, grade, post or Service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period -

(a) the period of reduction to time-scale of pay, grade, post or service shall operate to postpone future increments of his pay, and if so, to what extent; and

(b) the Government servant shall regain his original seniority in the higher time scale of pay, grade, post or service;

(vii) compulsory retirement;

(viii) removal from service which shall not be a disqualification for future employment under the Government;
(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

Provided that, in every case in which the charge of possession of assets disproportionate to known-source of income or the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (viii) or clause (ix) shall be imposed:

Provided further that in any exceptional case and for special reasons recorded in writing, any other penalty may be imposed.

EXPLANATION - The following shall not amount to a penalty within the meaning of this rule, namely:-

(i) withholding of increments of a Government servant for his failure to pass any departmental examination in accordance with the rules or orders governing the Service to which he belongs or post which he holds or the terms of his appointment;

(ii) stoppage of a Government servant at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;

(iii) non-promotion of a Government servant, whether in a substantive or officiating capacity, after consideration of his case, to a Service, grade or post for promotion to which he is eligible;

(iv) reversion of a Government servant officiating in a higher Service, grade or post to a lower Service, grade or post, on the ground that he is considered to be unsuitable for such higher Service, grade or post or on any administrative ground unconnected with his conduct;

(v) reversion of a Government servant, appointed on probation to any other Service, grade or post, to his permanent Service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing such probation;

(vi) replacement of the services of a Government servant, whose services had been borrowed from a State Government or any authority under the control of a State Government, at the disposal of the State Government or the authority from which the services of such Government servant had been borrowed;

(vii) compulsory retirement of a Government servant in accordance with the provisions relating to his superannuation or retirement;

(viii) termination of the services -

(a) of a Government servant appointed on probation, during or at the end of the period of his probation, in accordance with the terms of his appointment or the rules and orders governing such probation, or
of a temporary Government servant in accordance with the provisions of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, or

c) of a Government servant, employed under an agreement, in accordance with the terms of such agreement.

**Disciplinary Authorities (Rule 12 CCS (CCA) Rules, 1965)**

1. The President may impose any of the penalties specified in Rule 11 on any Government servant.

2. Without prejudice to the provisions of sub-rule (1), but subject to the provisions of sub-rule (4), any of the penalties specified in Rule 11 may be imposed on -

   a) a member of a Central Civil Service other than the General Central Service, by the appointing authority or the authority specified in the schedule in this behalf or by any other authority empowered in this behalf by a general or special order of the President;

   b) a person appointed to a Central Civil Post included in the General Central Service, by the authority specified in this behalf by a general or special order of the President or, where no such order has been made, by the appointing authority or the authority specified in the Schedule in this behalf.

3. Subject to the provisions of sub-rule (4), the power to impose any of the penalties specified in Rule 11 may also be exercised, in the case of a member of a Central Civil Services, Group ‘C’ (other than the Central Secretariat Clerical Service), or a Central Civil Service, Group ‘D’,-

   a) if he is serving in a Ministry or Department of the Government of India, by the Secretary to the Government of India in that Ministry or Department, or

   b) if he is serving in any office, by the head of that office, except where the head of that office is lower in rank than the authority competent to impose the penalty under sub-rule (2).

4. Notwithstanding anything contained in this rule -

   a) except where the penalty specified in clause (v) or clause (vi) of Rule 11 is imposed by the Comptroller and Auditor-General on a member of the Indian Audit and Accounts Service, no penalty specified in clause (v) to (ix) of that rule shall be imposed by any authority subordinate to the appointing authority;

   b) where a Government servant who is a member of a Service other than the General Central Service or who has been substantively appointed to any civil post in the General Central Service, is temporarily appointed to any other Service or post, the authority competent to impose on such Government
servant any of the penalties specified in clauses (v) to (ix) of Rule 11 shall not impose any such penalties unless it has consulted such authority, not being an authority subordinate to it, as would have been competent under sub-rule (2) to impose on the Government servant any of the said penalties had he not been appointed to such other Service or post;

(c) in respect of a probationer undergoing training at the Lal Bahadur Shastri National Academy of Administration, the Director of the said Academy shall be the authority competent to impose on such probationer any of the penalties specified in clauses (i) and (iii) of rule 11 after observing the procedure laid down in rule 16.

EXPLANATION I. For the purposes of clause (c), 'probationer' means a person appointed to a Central Civil Service on probation.

EXPLANATION II. Where a Government servant belonging to a Service or holding a Central Civil post of any Group, is promoted, whether on probation or temporarily to the Service or Central Civil post of the next higher Group, he shall be deemed for the purposes of this rule to belong to the Service of, or hold the Central Civil post of, such higher Group.

Government of India’s decision:

Officers performing current duties of a post cannot exercise Statutory powers under the Rules:-

An officer appointed to perform the current duties of an appointment can exercise administrative or financial power vested in the full-fledged incumbent of the post but he cannot exercise statutory powers, whether those powers are derived direct from an Act of Parliament (e.g. Income Tax Act) or Rules, Regulations and Bye-Laws made under various Articles of the Constitution (e.g., Fundamental Rules, Classification, Control and Appeal Rules, Civil Service Regulations, Delegation of Financial Powers Rules etc.)

[MHA OM No. 7/14/61-Ests. (A) dated 24th January, 1963].

Clarification about rules 12, 14 etc.

Several points relating to rules 12, 14, 15 and 29 of CCS (CCA) Rules, 1965, are being frequently referred to Home Ministry for clarification. These points are indicated below and the clarification given against each.

<table>
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<tr>
<th>Points raised</th>
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<tr>
<td>1. (a) In cases where the disciplinary authority is the President, whether the case should be shown to the Minister before disciplinary proceedings are initiated.</td>
<td>(a) Having regard to the Transaction of Business Rules, it is necessary that in cases where the disciplinary authority is the President, the initiation of the disciplinary proceedings should be approved by the Minister.</td>
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<td>(b) Whether it is necessary to show the file to the Minister every time</td>
<td>(b) It would be sufficient if Minister’s orders are obtained for taking action</td>
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<td>before formal orders are issued in the name of the President, under Rules</td>
<td>ancilllary to the issue of the charge sheet at the stage when the papers are</td>
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<td>14 (2), 14(4), 14(5) etc. of the CCS (CCA) Rules?</td>
<td>put up to him for initiation of disciplinary proceedings. However formal orders</td>
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<td>of the Minister should be obtained at the stage of show cause notice under</td>
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<td>Rule 15 (4) (i) (b) and at the stage of issuing final orders imposing penalty</td>
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<td>under Rule 15 (4) (iii).</td>
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2. What happens to the disciplinary proceedings started by a disciplinary       | In such cases it is not necessary for disciplinary authority (B) to start de   |
| authority (A) in respect of a Government servant when the latter is           | novo proceedings by framing and delivering fresh articles of charge to the     |
| transferred to the jurisdiction of another disciplinary authority (B) even     | concerned official. He can carry on with the enquiry proceedings at the point   |
| though the said Government servant continues to be in the same service?      | where the transfer of the accused Officer was effected. If, however, the       |
|                                                                                | accused official is transferred to another service then the procedure laid     |
|                                                                                | down in Rule 12 (4) (b) of the CCS (CCA) Rules will have to be followed.      |

[MHA Memo No. F.39/1/69-Ests.(A) dated the 16th April, 1969]

**Authority to institute proceedings (Rule 13 CCS (CCA) Rules, 1965)**

1. The President or any other authority empowered by him by general or special
   order may -

   a. institute disciplinary proceedings against any Government servant;

   b. direct a disciplinary authority to institute disciplinary proceedings against any
      Government servant on whom that disciplinary authority is competent to impose
      under these rules any of the penalties specified in rule 11.

2. A disciplinary authority competent under these rules to impose any of the penalties
   specified in clauses (i) to (iv) of rule 11 may institute disciplinary proceedings against
   any Government servant for the imposition of any of the penalties specified in clauses (v) to (ix)
   of rule 11 notwithstanding that such disciplinary authority is not competent under these rules to
   impose any of the latter penalties.
Chapter 24

DEPARTMENTAL INVESTIGATION

INTRODUCTION

Departmental investigation is also known as Preliminary Inquiry or Investigation and is intended to help the disciplinary authority to come to a conclusion whether a prima-facie case is made out against the Government servant warranting the issue of formal charge sheet either under Rule 16 (i.e. for minor penalty) or under Rule 14 (i.e. for major penalty). This is therefore, not covered by the provisions of Article 311(2) which apply to the inquiry being held after issue of the charge sheet. It is, therefore, permissible to record statements of officials and others at the back of the Government servant against whom the investigation is being conducted. This whole of the investigation, if necessary, can be conducted without the knowledge of the concerned government servant. It is open to the Investigating Officer to examine or not to examine the involved Government servant during preliminary investigation.

WHEN TO ORDER DEPARTMENTAL INVESTIGATION?

A Departmental investigation may be ordered where allegations relate to:

(a) a misconduct other than an offence;

(b) a departmental irregularity;

(c) a breach of orders, rules, regulations, administrative instruction or accepted procedure;

(d) Negligence; and

(e) where alleged facts are verifiable departmentally. Departmentally verifiable facts are those facts which can be verified either from the documents available in the department itself or from the documents available in the department itself or from another department of the Govt., Public Sector Undertakings, Govt. company or any other organisation, which is under the control of the Govt.

STEPS FOR DEPARTMENTAL INVESTIGATION

Whenever allegations are made against a Govt. servant either through a complaint or otherwise, it is the duty of the Chief Vigilance Officer/Vigilance Officer to study the allegations with a view to finding out whether the same can be verified departmentally or these require special investigation either by the Central Bureau of Investigation or by the local Police. In cases where the information is verifiable from documents available in the department, the Chief Vigilance Officer/Vigilance Officer should seize the documents as carefully as possible. Seizure of documents at the earliest is an essential requirement because the likelihood of their being tampered with cannot be ruled out.
The next stage is to list out the officials, who may be knowing the facts. This list should also be prepared at the interrogated and their statements recorded. In case it is found necessary to make inquiry from the employees of any other Govt. department or office, the Vigilance Officer will seek the assistance of the Department concerned for providing facility for interrogating person or persons concerned and/or taking their written statements.

In certain types of complaints, particularly those pertaining to works, the Vigilance Officer may find it helpful to make a site inspection or a surprise check to verify the facts. While doing so, he should ensure that the evidence round at the spot in support of the allegations is not disturbed.

In certain cases where the Government servant complained against his in-charge of the Stores, it may be advantageous to get him transferred, so that he may not be able to tamper with records. In certain cases of investigation, it would be advantageous to obtain the version of the concerned Government servant. It is quite possible that in the absence of such an explanation, the Public Servant concerned may be proceeded against unjustifiably. This would also help the Investigating Officer to verify the explanations given by the concerned Government servant and the truth thereof. However, such an opportunity may not be given in the cases in which a decision to institute departmental proceedings is to be taken without loss of time, for example, in a case in which the Public servant concerned is due to retire or to superannuate soon and it is necessary to issue the charge sheet to him before his actual retirement.

WHO SHOULD INVESTIGATE DEPARTMENTALLY?

Normally, the Vigilance Officer himself should hold the preliminary inquiry in cases in which vigilance angle is involved. The Vigilance Officer may suggest to the administrative authority to entrust the preliminary investigation to any other officer considered suitable in particular circumstances of the case. It may, for example, be found advisable to entrust a technical officer to conduct the preliminary inquiry, if it is likely to involve examination and appreciation of technical data or document. In cases where the complaint has no vigilance angle, it can be investigated by the administrative authority. In the departments which have a cadre of investigating officers/inspectors, the investigation can be entrusted to anyone of them depending on the work load. Where the preliminary investigation is entrusted to an officer of the department other than the Vigilance Officer of specially designated Investigating Officer/Inspectors, it should be entrusted to an officer of sufficiently higher status if the public servant complained against is of a senior rank.

QUALITIES OF AN INVESTIGATOR

An Investigator should have the following qualities:-

(a) He should be sufficiently senior in rank to the suspect officer.

(b) He should have both the qualities of head and heart.
(c) He should have an open mind, thinking and sound judgement.

(d) He should have specialised knowledge of the subject matter of inquiry.

(e) He should be conversant with the techniques of investigation.

(f) He should not be easily swayed by emotions and jump to conclusions. He should be honest and above board.

REPORT OF THE INVESTIGATION OFFICER

While submitting his report the Investigating Officer should give the list of the complaint in the very first paragraph of his report. The next paragraph should contain details of investigations carried out by him. The third paragraph should contain documentary and oral evidence that he has relied upon. The next paragraph should indicate the role of the suspect officer. In case the suspect officer was given an opportunity to explain the allegations, then his explanation should be briefly indicated. In case the suspect officer was not afforded a chance to explain his conduct, this fact should find a mention in the report. Next paragraph would include evidence to controvert the story of the suspect officer. The evidence collected should be discussed and evaluated by the Investigating Officer and he should make his recommendations in the last paragraph of the report based on his evaluation of the evidence. The report should be accompanied by:-

(a) All original documents seized by the Investigating Officer;

(b) Statements recorded by the Investigating Officer; and

(c) Written statement of suspect officer, if any, recorded during preliminary investigation.
Chapter 25

PRINCIPLES OF NATURAL JUSTICE

Introduction

The expression 'Natural Justice' is derived from the old expression 'Jus naturale' i.e. justice which comes naturally to a man or which is part of his nature.

Lord Asher has defined it as 'Natural sense of what is right and what is wrong.' It is well known that the elements of jurisprudence which are now regarded as the hallmark of the judicial system in civilized society were generally enforced or regarded as proper in olden times. The justice of Vikramaditya is proverbial and so was the case in the recent past during the reign of Jahangir commonly known as 'Jahangiri Insaf.' The common thread in both the systems of justice was that the King would hear the complainant first and then the person complained against before awarding any punishment. In England, the principles of British justice were based on the principles of fair play and justice. The phrase 'Due Process' has been included in the American Constitution. That 'no man should be condemned unheard' was a precept known to the Greeks, inscribed in ancient times, upon images in places where justice was administered. In old times the concept of natural justice was a concept embedded in religion and philosophy. Now it is a concept of practical utility in the dispensation of justice whether by a Court of Law or a quasi-judicial tribunal or authority. The concept has, of late, permeated to the field of Administrative decision making also to some extent. Before we proceed further, let us trace the historical development of the principles of natural justice.

Historical development of the principles of natural justice

The principles of natural justice are as ancient as man himself. Bible tells us the story of Adam and Eve, when they ate the fruit of knowledge while they were living in Paradise. The story goes that God had forbidden Adam and Eve, the first man and woman, to eat the fruits of a particular tree in Eden Gardens. The Satan, however, induced them to taste the fruit which they did. When this fact came to the knowledge of God, he did not condemn them and pass sentence. God, it is so said, called upon both Adam and Eve to explain. God said to Adam, 'Where art thou? Hast thou not eaten the fruit of the tree, whereof I command thee that thou, shouldest not eat'. This clearly shows that even God who is omnipresent and who knows all things did not think it proper to condemn without giving a chance to Adam and Eve to state before Him their defence. This principle, 'No one should be condemned unheard' is derived from the action of God himself. Certainly there can be no better authority in the world than God.

Position in England

Most of the eminent judges of 17th century upheld the supremacy of Natural Justice over the Statutory Law. In Calvin's case (1608)-7 Co Rep.la (121):77 ER 377 (391-392) it was held that the law of nature is immutable as it came before any judicial or Municipal law. It was also held that the law of nature was infused into the heart of man by God at the time of the creation of the nature of man for his
preservation and direction and this was therefore eternal and moral law since it was written with the finger of God in the heart of man before the law was written by his prophet, i.e. Moses. The view held was that even the Acts passed by Parliament, if these were repugnant to the law of nature would be void. According to this interpretation even an Act of Parliament made against natural justice and equity, as to make a man judge in his own cause, was held as void as the laws of nature were considered immutable. This position, however, underwent a radical change in the 19th century when the Courts in England held that the general principles of natural justice cannot modify the statutory law and no court can countenance a view that an Act of Parliament is not binding if it is contrary to reason or principles of natural justice. In the case of Logan Vs Burslem in 1842 it was held that a court of justice cannot set itself above the Legislature. Further in the historical case of Local Government Board Vs. Alridge (1915-A 120) it was conclusively laid down that the authority of courts is purely statutory and if an Act of Parliament expressly authorises a procedure inconsistent with the principles of natural justice, then that has to be followed, because the law of Parliament is Supreme. A distinction has, however, to be made in as much as that the principles of Natural Justice are applicable where the statutory law as made by Parliament is silent about the procedure. While once a view was held that the principles of Natural Justice are Supreme and above the laws of the land, the position has now been reversed. The position prevailing now is that the principles of natural justice are not construed to over-ride statutory laws.

Position in India

In India, which is also a Common Law country, the position is slightly different. The principles of natural justice are not treated as fundamental rights and hence there is no constitutional protection unlike the 'Due process' in America. Article 21 of the Constitution provides that no person shall be deprived of his life or liberty except according to the procedure established by law. The position as it prevails at present is that a law can be passed by the Indian Parliament violating the principles of natural justice and such law shall not be void. In India any law, which is repugnant to the express provisions of the Constitution alone is struck down as void. Thus the law providing for preventive detention without trial is a valid law in India. The correct position of the principle of natural justice has been admirably stated by the Supreme Court in the case of A.K. Kariapak Vs. the Union of India. The Supreme Court has observed, "the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law but supplement it". Whereas the duty of the courts, quasi-judicial tribunals or authorities is to follow the law as enacted by the legislature, they are not debarred from reading into it the principles of natural justice if these can be read in consonance with the provisions of the law. If, however, the law provides for a procedure which excludes the principles of natural justice either by a specific provision or by implication, these principles cannot be read into the law by the courts/quasi-judicial tribunals or administrative authorities.

Principles of Natural Justice

a) `Audi alteram partem' which denotes 'hear the other party' or in other words 'no one shall be condemned unheard'.

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b) ‘Nemo debat esse judex in propria causa’ meaning that no one shall be a judge in his own cause.

c) The final order must be a speaking order.

d) The decision must be made in good faith i.e. justice should not only be done but should manifestly appear to have been done.

First Principle

The first principle of natural justice, i.e. `Audi alteram partem' (hear the other side) means that no person shall be condemned unheard. A natural corollary of this principle is that the party against whom the proceedings are launched should have a reasonable notice of the case he is called upon to meet. The reasonableness of the notice is a question of fact to be ascertained in each case. However, notice implies that the person concerned is not only informed of the allegations against him but also the evidence supporting the allegations. The other requirement is that the person should be given a fair chance of being heard and allowed to rebut or explain the allegations levelled against him. This he can do, only if, he is allowed to cross examine the witnesses produced in support of the allegations, produce witnesses and documents in his own defence. In short he should have a fair opportunity to state his case and to meet the allegations made against him. This principle of natural justice also imposes another restriction that no evidence shall be recorded at the back of the party. But if a party fails to avail of the opportunity afforded to it of fair hearing because of its own wilful omission or neglect, then it is debarred from pleading that the principles of natural justice have been violated in its case. In T.R. Verma's case, the Supreme Court has laid down the following three conditions, which if satisfied, would amount to reasonable opportunity having been afforded:–

a) the adjudicator should receive all the relevant material which a party wishes to submit in his support.

b) The evidence of the opponent whether oral or documentary should be taken in his presence.

c) Each party should have the opportunity of rebutting the evidence of the other by cross examination or explanation.

If the above conditions are met, the principles of natural justice are deemed to be complied with substantially.

Second Principle

The second principle that no one shall be a judge in his own cause necessarily implies that the tribunal or the judge must be impartial and without bias. The judicial or quasi-judicial authority should not only himself not be a party but also not be interested as a party in the subject matter of the dispute which he has to decide. ‘Judges, like Caesar’s wife, should be above suspicion’. It is of fundamental importance that justice should not only be done, but should manifestly and
undoubtedly be seen to be done. It is, therefore, clear that a decision of a tribunal is vitiated by the mere fact that an interested person sat at the hearing. In the case of A.K. Kariapak Vs. the Union of India, the Supreme Court accepted the plea of the petitioner that the selection was vitiated because one of the persons on the Selection Board was himself a candidate for the post for which the Selection was held. In such a case the bias of the Selection Board was obvious. In order that a judge or quasi-judicial authority should be impartial it must be free from bias of any kind.

**KINDS OF BIAS**

Bias is of three kinds namely, (i) Pecuniary bias; (ii) Personal bias and (iii) Bias in the subject matter or official bias.

**Pecuniary Bias**

A pecuniary interest, however slight, will disqualify the person to be a judge in the case. Thus in the case of Air Corporation Employees Union Vs. Vyas the proceedings were held invalid because the Chairman of the arbitrators had accepted the hospitality of the Air Corporation on an inaugural flight. Similarly, share holders in a Railway Company were held to be disqualified from hearing charges against ticketless passengers even though the interest of each share-holder was less than one fourth of a pence. However, mere trusteeship of a friendly society would not constitute a pecuniary interest to disqualify a trustee.

**Personal Bias**

A judge may sometime have personal bias towards a party owing to relationship and the like or he may be hostile to a party as a result of events happening either before or during the trial. Whenever, there is an allegation of personal bias it should be seen whether there is in the mind of the accused a reasonable apprehension that he would not get a fair trial. The test, therefore, is that there should be a reasonable likelihood of bias. The phrase reasonable likelihood has been defined by the Supreme Court in the case of R. Parthasarthy Vs. State of Andhra Pradesh (AIR 1973-SC-2701) by observing that reasonable likelihood would be assumed if in the mind of a reasonable man there is a suspicion that there is a likelihood of bias.

**Bias in Subject Matter**

The bias in the subject matter or official bias must be specific. Thus a judge should not try a case in which he has examined himself as a witness. In the case of State of U.P. Vs. Mohd. Nooh (AIR 1958 SC 88) the facts were that Shri Mohd. Nooh was proceeded against departmentally. The Inquiry Officer appointed to inquire into the truth of the allegations acted as a witness. The Supreme Court held that he could not act as a witness. The Supreme Court held that he could not be a judge and the witness at the same time.

The mere general interest in the general object to be pursued would not disqualify the judge. Thus in the case of R. Vs. Deal Justices (1981) 45 L.T. 439 (441), it was held that a Magistrate who subscribed to the Society for Prevention of Cruelty
to Animals was not thereby disqualified from trying a charge brought by that body, of cruelty to a horse.

In all the above cases of bias, the party is required to raise the objection of bias at the earliest possible opportunity. Thus, if a party who with full knowledge of the facts constituting bias, does not raise the objection, it will be assumed that the party has expressly or impliedly waived his right. In these circumstances, the objection if raised later has to be overruled.

Third Principle

The third principle of natural justice demands that the final order should be a speaking order. A speaking order is one which contain the reasons for the conclusions reached. Now whether the judge has considered the evidence before him or not can only be ascertained if the final order is a speaking order. In the case of Bhagat Raja Vs, Union of India (1967) Z SCP 302 it has been held that if an order does not give any reasons, it does not fulfil the elementary requirements of a quasi-judicial process. Similarly, in the case of M.P. Industries Vs. Union of India (AIR 1966 SC 671) a plea was taken before the court that giving reasons might involve delay. Rejecting this contention, the Court observed:

"The least a tribunal can do is to disclose its mind as disclosure guarantees consideration. The condition to give reasons minimises arbitrariness, it gives satisfaction to the party against whom the order is made; and it also enables an appellate or supervisory court to keep the tribunals within bounds".

Fourth Principle

The principle that the decision must be made in good faith is derived directly from the principle that no one shall be a judge in his own cause. It presupposes the impartiality of the judge and that he should be without any bias. The decision must be made in good faith implies that the judge has bestowed due consideration to the facts and evidence adduced during the trial or enquiry. That he has arrived at the decision without favour to any of the parties that the Inquiry Officer has followed the procedure in such a manner that justice is not only done but manifestly appears to have been done.

Applicability of the Principles of Natural Justice to disciplinary proceedings

The principles of natural justice are imported into the disciplinary proceedings by virtue of the provisions of Article 311 (2) of the Constitution of India. The Article 311 (2) provides for `reasonable opportunity' being given to the charged govt. servant before imposing on him the penalty of dismissal, removal or reduction in rank. However, reasonable opportunity has not been defined in the Constitution and hence, the principles of natural justice become applicable during the departmental inquiry. It would thus be necessary to appoint an impartial enquiring authority to enquire into the charges against the govt. servant. A prosecution witness or a person, who has any kind of bias cannot be appointed as an Inquiring Authority. It is also necessary that fair opportunity is provided to the charged Govt. servant during departmental inquiry to enable him to put forth his point of view.
comprehensively before the enquiring authority with the aid of oral and documentary evidence. The final report of the enquiring authority as well as the final order of the disciplinary authority imposing a penalty has to be a speaking order.

Conclusion

To sum up, generally the principles of natural justice are applicable to judicial and quasi-judicial proceedings, unless their operation is ruled out by the specific and positive provisions of a statute or law or by its necessary implication. These rules are not applicable in respect of purely administrative orders which are rested on subjective discretion, but may be applied where the administrative authority is called upon to decide objectively or where its decision is likely to effect the other party prejudicially to a great extent. These principles are intended to ensure fair play and justice or to avoid miscarriage of justice. Some of the commonly recognised principles of natural justice are:-

a) Hear the other party or no one should be condemned unheard.

b) No one shall be a judge in his own cause.

c) The final order must be a speaking order.

d) The decision must be made in good faith.

The requirements of natural justice have been summed up admirably by the Madras High Court in the case of G. Gabriel Vs. State of Madras (1959) -2 MLJ 15 (Mad HC) in the following terms:-

"All enquiries, judicial, departmental or other, into the conduct of individuals must conform to certain standards. One is that a person proceeded against must be given a fair and reasonable opportunity to defend himself. Another is that a person charged with the duty of holding the enquiry must discharge that duty without bias and certainly without vindictiveness - He must conduct himself objectively and dispassionately not merely during the procedural stages of the enquiry, but also in dealing with the evidence and the material on record when drawing up the final order. A further requirement is that the conclusions must be rested on the evidence and not on matters outside the record. And, when it is said that the conclusion must be rested on the evidence, it goes without saying that it must not be based on the misreading of the evidence. These requirements are basic and cannot be whittled down, whatever be the nature of the enquiry whether it be judicial, departmental or other. However, where the enquiry is judicial, we insist that yet another requirement should be complied with, that is contained in the familiar statement that it is not sufficient that justice is done but that justice should also manifestly appear to be done."
Chapter 26

CHARGE SHEET AND HOW IT SHOULD BE DRAFTED

WHAT IS A CHARGE SHEET

A charge sheet has been defined as *prima facie* proven essence of allegations against a Government Servant. Since in a disciplinary proceeding, except where the allegation is of a minor nature, it is essential to hold an inquiry to give a reasonable opportunity to the accused employee, to meet the allegation against him, to prove his innocence it becomes necessary to inform the accused employee of the allegations against him in sufficient detail and with full particulars before such an inquiry could be held.

WHY IS IT NECESSARY TO ISSUE CHARGE SHEET

Issue of charge sheet is part of the old age dictum of Natural Justice “Audi alteram partem” i.e. hear the other party. Since the bearing has to be in substance and not merely in form, it is essential that before the accused employee is heard he know full and completely the allegations against him and the documentary and the oral evidence supporting the allegations. Absence of charge sheet will, therefore, result in violation of the above said principle of natural justice for the simple reason that without informing the delinquent employee of the charges against him any opportunity given to him to defend himself will be merely an empty formality.

In the case of Central Civil Services covered by the provisions of Article 311 of the Constitution, which itself provides that before a civil servant could be dismissed, removed or reduced in rank, an inquiry shall be held in which he has been informed of the charges against him and giving a reasonable opportunity of being heard in such cases, is, therefore, mandatory in terms of the constitutional provisions.

WHEN IS A CHARGE SHEET NECESSARY

Article 311 of the Constitution referred to above applies in case of three punishments only, i.e. dismissal or removal from service, and reduction in rank. Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 provides that a charge sheet has to be issued in all cases where it is intended to take major penalty action against a Government servant. Thus issue of charge sheet is obligatory in all cases where proceedings are taken for the imposition of a major penalty. In addition to that Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 provides for certain situations where a full-fledged inquiry has to be held in accordance with the procedure laid down in Rule 14 of ibid Rules and hence issue of charge sheet is also necessary in those situations.

These cases are:-

(a) Where the disciplinary authority is of the opinion that such an inquiry is necessary;
(b) Where it is proposed to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant.

(c) Where the proposal is to withhold increments of pay for a period exceeding three years; or

(d) Where the proposal is to withhold increments of pay with accumulative effect for any period.

(Rule 16 (i) (b) and 16 (1-A)

WHETHER A PRELIMINARY INQUIRY SHOULD BE HELD BEFORE ISSUE OF CHARGE SHEET

A charge sheet is the _prima facie_ proven essence of allegations against a Government servant. It will itself indicate that the Disciplinary Authority considered them and reached a _prima facie_ conclusion that there exists a case which deserves to be looked into by way of regular procedure. Such facts of the case are necessary to be collected in a preliminary inquiry by a Departmental officer or in an investigation made by the CBI or by the local police to enable the Disciplinary Authority to examine the matter and reach a conclusion. It is true that holding of preliminary inquiry is entirely discretionary and there is no rule or principle which compels its holding. **Hence, strictly speaking a charge sheet can be issued without holding preliminary inquiry or without calling for an explanation.** But the holding of a preliminary inquiry and calling for an explanation of the person concerned has a definite advantage and would lead to avoidable burden of work in cases where the employee can furnish a convincing explanation of the allegation against him.

WHO CAN ISSUE CHARGE SHEET

Article 311 (1) of the Constitution which provides that “no central civil servant shall be dismissed or removed by an authority subordinate to that by which he was appointed”, does not apply to the institution of proceedings. Therefore, where a final order of dismissal or removal can be made by the competent Disciplinary Authority only, issue of charge sheet is not protected by these provisions. It does not, however, mean that a charge sheet may be issued by any authority. Rule 13 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 provides that a disciplinary proceeding may be instituted against a Government servant by:-

(1) The President; or
(2) Any other authority empowered by him by general or special order; or
(3) Any disciplinary authority, as defined in Rule 2 (g) of the said rules.

In result, the charge sheet should be issued by the authority who is instituting the proceedings, such authority being competent to do so in terms of Rule 13 referred to above. The various Disciplinary Authorities have been specified in Rule 12 of the said rules.

Although it is desirable that a charge sheet is signed by the Disciplinary Authority himself, there is nothing illegal in its being signed by a subordinate officer under instructions of the Competent Authority. In cases where President is the Disciplinary Authority the charge sheet shall be issued in the name of the President.
and signed by an officer authorized to authenticate orders of the President, in terms of Authentication (Orders and other instruments) Rules, 1958. In such cases the approval of the Minister could be obtained before instituting the disciplinary proceeding.

FORM OF A CHARGE SHEET

The Rule 14(3) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 provides that where it is proposed to hold an inquiry against a Government servant in terms of Rule 14 and 15, the Disciplinary Authority shall draw up cause to be drawn up -

(i) The substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) A statement of the imputations of misconduct or misbehaviour in support of each article of charge which shall contain.

(a) A statement of all relevant facts including any admission or confession made by the Govt. servant;
(b) A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

The charge sheet drawn up in the above said manner shall be delivered or cause to be delivered to the Government servant along with a covering Office Memorandum for which a standard form has been presented by the Ministry of Home Affairs. This Office Memorandum informs the charged employee that it is proposed to hold an inquiry against him in terms of Rule 14 of the CCS (CCA) Rules, 1965 and he/she is directed to submit a written statement of Defence within a period of 10 days from its receipt. He/She is also informed that he/she is required specifically to admit or deny each article or charge because an inquiry shall be held only in respect of the charges which are not admitted. He/She is also asked to state whether he/she desires to be heard in person.

THREE ESSENTIAL PRELIMINARIES TO THE DRAFTING OF CHARGE SHEET.

GET HOLD OF ORIGINAL RECORDS

No charge sheet should be prepared on the basis of statements of reports received from subordinate authorities. It is absolutely essential that original records are looked into before an attempt is made to frame a charge sheet. The reason is that the various relevant documents on which the charges are based are open to inspection by the accused employee during the course of inquiry. May be during this inspection he comes across some point(s) which was/were not properly checked by the Disciplinary Authority and the original records were not referred. To avoid such an exigency one should make it a point to examine the relevant original records in their correct perspective before framing charges. Even in case where a charge sheet is prepared by the CBI, it is desirable that the charge sheet is justified with reference to original records before it is approved and issued.
CHECK UP YOUR FACTS

Whatever factual statements are mentioned in the charge sheet particularly in Annexure II i.e. Statement of imputation of misconduct or misbehaviour in support of the article of charge must be checked up fully with reference to the relevant records. No doubt, a charge sheet can be appended, if necessary, even during the course of inquiry proceedings but such a necessity should not arise simply because necessary care was not taken by the Disciplinary Authority to check up the fact before its issue. The accused Government servant or his Defence Assistant will be fishing for loopholes which are there in the charge sheet and the Disciplinary Authority should take care that they are not caught on the wrong leg. When a charge sheet drafted by the CBI is received in a Department every care should be taken to check up the various factual statement made.

STUDY THE FACTS IN CORRECT PERSPECTIVE

The facts as they come up from the relevant records should be put together in a logical manner. The charges should flow logically from these facts and the allegations on the part of the accused employee should have a direct bearing with the situation in which the misconduct happened. The charges must be directly related with the misconduct and the logical conclusion. Sometimes, although a conclusion is drawn that the accused employee did not conform with the provisions of the rules or the procedures or had otherwise acted negligently. In fact, things are deeper and the employee might have acted deliberately with a corrupt motive.

IMPORTANT POINTS TO BE KEPT IN VIEW WHILE FRAMING CHARGES

CHARGES MUST BE SPECIFIC WITH FULL PARTICULARS

It is imperative upon the Disciplinary Authority to frame specific charges in the clearest terms with full particulars. The language used must be clear, free from ambiguity and incapable of misconstruction. It is essential that the charges indicated are precise and the statement of misconduct or misbehaviour, in its support gives all essential particulars to understand them properly and to answer them effectively. The time and place of the incident must be clearly mentioned. If the allegation is that the employee has misconducted in specified manner more than once, the frequency with full particulars of time, place and manner must be brought out. Further, not only charges must be precise, but the motive as attributed to the delinquent should also be stated in clear and precise terms.

CHARGES MUST NOT BE VAGUE

In disciplinary proceedings the charges made out against an employee must be clear, definite and specific and should in no case suffer from vagueness. ‘Vague’ is antonym of ‘definite’. If the ground of the action mentioned in a charge sheet is not defined with sufficient particularity or stated affirmatively, charge can be said to be vague. ‘Vagueness’ is a relative term and whether particular statement is vague or not will depend how it has been drafted and what particulars it contains. The acid test is that the charged Government servant should be able to understand the charge perfectly and know the specific material on which it is based. Vague terms lacking
precision must be avoided. Some examples of vague terms are ‘he used to accept bribes’ (without giving any definite any detail about the acceptance of bribes and its frequency); ‘failed to show improvement in working’ (no instances of lack of improvement mentioned); with ulterior motive (what motive?).

**AVOID MULTIPLICATION OF CHARGES**

There should normally be one charge for one transaction. For example, in a case two officers were charge sheeted for employing the person in one capacity while falsely showing him in the muster roll in a different capacity and recording wrong entries in the muster roll. The facts of the case were that a person had been engaged actually as a typist but shown on muster roll because no budget provision existed for the vacancy of typist. Four charges were framed:

(2) Preparing fictitious entries;
(3) Making false entries in the measurement books to show a fictitious on the muster roll;
(4) Employing a person in one capacity and recording wrong certificates of payment on the muster roll and
(5) Deliberate disregard of standing orders and gross misconduct.

The transaction was one and the same and it was unnecessary to frame many charges. There is sometimes tendency on the part of the Disciplinary Authority to frame more charges on the thinking that if during the inquiry some of the charges fall the delinquent may be booked at least on the rest. But such an approach is not only dishonest but also fallacious. Since the transaction remains only one what actually has to be proved during inquiry is that the basic facts constituting the misconduct do exist. Such multiplication of charge must be avoided at all costs.

**AVOID MISJOINDER OF CHARGES.**

On the contrary to the position brought out in preceding paragraph, where there are more than one transaction, it will be a mistake to frame only one charge. The reason is that if such a charge is framed, it will be heterogeneous and it will not be easy for anybody who reads the charge sheet to understand the charges and the allegations in support thereof. **Golden rule is that there should be separate charge for each incident.** Each misconduct should, therefore, be subject for a separate charge and in the statement of imputations different circumstances of each misconduct should be act forth separately.

**MENTION OF CONDUCT RULE VIOLATED**

It is not necessary to mention specifically in the charge sheet, the particular Conduct Rule which has been violated by the accused Government servant. The reason is that the Conduct Rules are, by their very nature, only illustrative not exhaustive. Hence, if the Conduct Rule violated is not mentioned specifically it will neither make the charge sheet a vague one nor vitiate it. On the other hand, if the Rule violated is mentioned in the charge sheet specifically, there is nothing wrong with it. **The precaution to be taken is that a wrong Rule is not mentioned.** It is no doubt correct that even a wrong mention of Rule does not ipso facto vitiate the charge sheet.
but it goes without saying that every precaution should be taken at the preparation of charge sheet and all factual statements as well as references to rules, orders etc. must be absolutely correct.

WHETHER PROPOSED PENALTY SHOULD BE MENTIONED IN THE CHARGE SHEET

Normally not a charge sheet contains statement believed to be true by the Disciplinary Authority prima facie on the basis of evidence available with him. The final position of acts will emerge only after a full-fledged inquiry has been held into the charges. The Disciplinary Authority must keep his mind open till the final position emerges and decide the question of guilt or innocence and question of punishment where the accused Government servant is found guilty only after the inquiry has been completed. However, it may be added that the Court of Law have not quashed charge sheet on the only ground that they contain mention of the proposed punishment also.

AVOID PETTY CHARGES

Charges should not be of a petty nature. Even if there has been a lapse by the employee, he/she may be warned suitably, verbal or in writing, and in suitable cases action may be taken under Rule 16. It is of no use making petty charges subject matter of regular departmental proceedings. Departmental proceedings are time consuming and put extra work on the Inquiry Officer, Presenting Officer and other functionaries connected with it. A Disciplinary Authority should make sure what are the charges for which he intends to issue a charge sheet are based on some misconduct substantial enough to deserve imposition of a major penalty on the Government servant concerned.

THE DISCIPLINARY AUTHORITY SHOULD NOT PREJUDICE ISSUE

It is no doubt true that the very fact of issue of charge sheet will indicate that the Disciplinary Authority, being in possession of suitable evidence, has tentatively come to the conclusion that the accused Government servant has acted in the manner mentioned in the charge sheet. However, there should neither be nor the charge sheet should give an impression that the Disciplinary Authority has prejudged the issues and the inquiry is being held just as a formality.

MENTION OF PAST MISCONDUCT

Where the Disciplinary Authority is of the opinion that the gravity of misconduct has increased because of some previous bad record of the delinquent employee and the disciplinary authority intends to take into account finally for deciding the quantum of punishment, the same should also be specifically mentioned in the charge sheet. The reason is that, in accordance with the provisions of Art. 311 (2) of the Constitution, the final decision has to be based on the evidence adduced during the inquiry only. It would, however, appear that a proved past misconduct can be taken into account for deciding the quantum of punishment though it might not have been referred in the charge sheet.
DRAFTING OF CHARGE SHEET

As earlier stated, a charge sheet consists of four annexes, namely Article of charge, statement of imputation of misconduct or misbehaviour, list of documents, and list of witnesses supporting the charges of these four annexes. Annexure II is of special importance as it contains the detailed particulars leading to the misconduct. It is, therefore, advisable that for framing a charge-sheet, the first annexure to be prepared should be Annexure II. This annexure should be written in narrative form giving all facts leading to the misconduct and should be drafted in such a manner that any person, even a total stranger, should be able to understand the whole case after reading it. The allegations must be mentioned specifically, and the accused Government servant should not be left to guess the material particulars on which the charges are based. In fact, as pointed out by the Supreme Court in Surtax Chandler Chakravarty Vs State of West Bengal, Art. 1971 Sc 752 clarity is an absolute necessity. The statement should also contain mention of any admissions made by the Government Servant. Care should be taken not to refer therein any confidential or secret documents viz. the preliminary inquiry report of advice of the Central Vigilance Commission. After this annexure has been prepared, a second careful reading of this statement will bring out the various documents of witnesses who are required to support the allegations. Such documents should be listed in Annexure III & the witnesses in Annexure IV. Finally Annexure I should be prepared. The Central Vigilance Commission has prescribed a form for it in their letter No. 4/23/70-B dated 23rd December, 1970 which should be used. The charges should be formulated in abstract formulation, suggesting thereby the general nature of the culpability such as official misconduct, inefficiency, gross negligence, corruption etc. Detailed recital of facts is not necessary. They are to be read along with the statement of allegations in Annexure II. There should be separate charge for each separate allegation as discussed earlier.

The Charge-sheet so framed should be delivered to the accused Government servant with a covering letter for which a standard Proforma has been prescribed by the Ministry of Home Affairs.

“The essence of knowledge is having it, to apply it”.

-CONFUCIOUS.
Chapter 27

FEW IMPORTANT DO’S AND DON’T FOR INQUIRY OFFICER/ PRESENTING OFFICER

Disciplinary proceedings are quasi–judicial in nature. I. O. should check up if he has been duly appointed by the competent Disciplinary Authority through a written formal order. He should get hold of the papers required initially viz. copy of the Articles of charges, list of witnesses. And list of documents on which the articles of charge are to be sustained a copy order appointing the Presenting Officer. He should conduct the inquiry by just, judicious and fair manner. He should not be biased having absolutely no personal interest in the case. He should ensure that there is no undue delay in conducting the inquiry and subsequently open Daily Order Sheet.

Once a regular hearing is started, the case should be heard on ‘day to day’ basis. The agony of the C.O. should not be allowed to be lengthened. There should be minimum adjournments, except for illness supported by Medical Certificate or for unavoidable circumstances “Justice delayed is justice denied”. It should be borne in mind that the provisions of evidence act are not applicable in domestic inquiries. Ex parte proceedings should not be started when C. O. is under suspension and is not in receipt of subsistence allowance. Irrelevant questions should not be allowed. Recall a witness for re-examination only if absolutely necessary in the interest of justice. Production of new evidence should not be allowed to fill up a gap in the evidence but only where there is an inherent lacuna or doubt in the evidence produced. I. O. should be judicious in his decisions. I. O. findings must be based on the evidence adducted during the inquiry. No material from personal knowledge be imported in the case. I. O. should not indulge in unnecessary hairsplitting arguments. The conclusions should be logical and should not appear as if you had already made up your mind. The principles of natural justice and reasonable opportunity should be kept in mind.

ROLE OF PRESENTING OFFICER

P. O. should present his case in a understandable and orderly manner with clarity and logic. He is to assist the I. O. and plan the stage of regular hearings purposefully. He should get touch with the Investigating officer, discuss the case in detail and suggest further investigation, if necessary, so that the oral and documentary evidence is adequate to present the case. He should study each element of the event/transaction, and each element of misconduct attributed to the C. O. Great case is needed in all this exercise.

2. If a document is admitted, it should be produced by a person who is in possession of it. But if any document is not admitted, the person who prepared it should be offered as a witness so that the C. O. could cross-examine him. Too many adjournments may not be taken on ‘Unconvincing ground’. P. O. should be present in all the hearings or at least a substitute be sent. The case may not be lost by default. Do not ask questions in a routine or mechanical manner. Possible defence of the C. O. should be anticipated and be ready to cross-examine the defence witnesses. When the P. O. has fully studied the case, he should not ask the time for submitting his brief.
3. Every public servant is expected to maintain a certain standard of good conduct in his official as well as private life. He should always maintain absolute integrity, honesty and good conduct. When he fails to maintain these, he commits misconduct and he would take the shelter by pleading absence of ‘malafides’ A public servant has to act in good faith and if he has discretionary powers, the use of such discretion should be judged by what a prudent person would have done in the circumstances.

4. Natural justice can be defined by:-
   (i) Right to be heard, (ii) No person can be judged in his own cause, & (iii) Justice should not only be done, but seemed to have been done. The judgment should be clear by a speaking order. As regards ‘Standard of proof’, it would be borne in mind that the technicalities of criminal Law should not be invoked in the disciplinary proceedings and in departmental proceedings. The standard of proof is ‘preponderance of probability’ and not beyond reasonable doubt. But more suspicion should not be allowed to take the place of proof. P. O’s written brief should be crisp and not verbose and ensure that a copy of the brief is also given to the C. O.

DEFENCE ASSISTANT.

It is rather difficult to plead one’s own cases. An ideal Defence Assistant will be he who is thorough with departmental rules, regulations and has a fair knowledge of examination of witnesses. It is desirable if he has previous experience of Defence Assistant. It would be seen that if he loses the case, he will be feeling bad that he could not extricate the C. O. from his involvement. He has to do a lot of planning. Study the case thoroughly and ask for additional documents required for the defence. He should not put too many irrelevant questions to the P. O. The proceedings should not be obstructed which will create bad impression in the mind of the I. O. Disciplinary Authority should rather extend full cooperation to the I. O. Frivolous objections should not be raised. In case the preponderance of probability evidence is against the C. O., the Defence Assistant should argue that the C. O. had acted bonafide without any malafide intentions.

A retired government servant can act as Defence Assistant in seven cases at a given point of time whereas a serving official can do so in three cases only.
Chapter 28

PROCEDURE FOR IMPOSING MINOR PENALTIES

(i) Employee should be informed of the imputations of misconduct/misbehavior, and the action proposed to be taken, giving him an opportunity to represent against the proposal.

(ii) An inquiry will be conducted if considered necessary, in the same manner as for major penalties.

(iii) An inquiry is a must if it is proposed to withhold the increment, adversely affecting pension, or for more than 3 years, or with cumulative effect.

(iv) If employee requests for an inquiry, the authority should apply its mind to reasons given by the employee and use its discretion to hold an inquiry or not.

(v) An accused employee may be permitted to inspect the documents, if he so requests.

(vi) Record the finding on each imputation of misconduct/misbehavior, taking into consideration the employee’s representation and the inquiry report, and consulting UPSC wherever necessary.

(vii) The records of the proceedings shall include:

(a) Copy of intimation to employee about the proposal to take action.
(b) Copy of statements of imputation of misconduct/misbehaviour given to the employee.
(c) Representations, if any, from the employee.
(d) Evidences produced in inquiry, if any.
(e) Advice of UPSC, if any.
(f) Findings on each imputation of misconduct/misbehaviour.
(g) The order on the case together with reasons.

(viii) Where at the end of the proceedings of any inquiry, if the disciplinary authority decided to impose a minor penalty, the authority concerned can straightaway do so after consulting UPSC, where necessary.
Chapter 29

PROCEDURE FOR IMPOSING MAJOR PENALTIES

(i) An inquiry is a must for imposing a major penalty.

(ii) The truth of imputation of misconduct/misbehaviour against the employee shall be inquired into by the disciplinary authority himself or by an inquiry authority (IA) appointed by the disciplinary authority.

(iii) Disciplinary authority shall frame and deliver to the accused official-

   (a) A copy of the chargesheet (indicating misconduct/misbehaviour).
   (b) Statement of imputations of misconduct/misbehaviour.
   (c) List of documents and witnesses to prove the misconduct/misbehaviour.

(iv) Disciplinary authority shall ask the accused official-

   (a) to submit his written statement of defence within the stipulated time, and
   (b) to state whether he shall desire to be heard in person.

(v) If in the written statement of defence all charges have been accepted by the employee, disciplinary authority shall record findings, taking evidences if needed and act further. The inquiry officer should be sufficiently senior to the accused official.

(vi) The disciplinary authority may modify or drop any or all of the charges on receipt of statement of defence from the employee.

(vii) Disciplinary authority will appoint a Government official or a legal practitioner as “Presenting Officer” (PO) to present the case of the Government before IA.

(viii) Disciplinary authority shall forward to IA-

   (a) A copy of chargesheet.
   (b) A copy of statement of imputations of misconduct/misbehaviour
   (c) A copy of the written statement of the defence.
   (d) A copy of statement of witnesses, if any.
   (e) Evidence of delivery of documents to the accused official.
   (f) A copy of order appointing the PO.

(ix) the accused employee shall appear in person before the IA at the appointed place and time notified by the IA.

(x) The employee can take help of another employee (in service/retired) as Defence assistant for presenting his case. The Defence Assistant maybe legal practitioner if the Presenting Officer (PO) is a legal practitioner, or if the IA permits having regard to the circumstances of the case.
(xii) If the employee pleads guilty in respect of any of the charges, IA will record the same, obtain his signature and return a finding of guilt.

(xiii) Oral and documentary evidences shall be produced, and witnesses examined and cross-examined by the Presenting Officer and the employee.

(xiv) If the employee does not submit his written statement of defence or does not appear in person, the inquiry shall be held ex-parte.

(xv) If the disciplinary authority competent to impose only minor penalties, on the end of an inquiry, feels that major penalty is to be imposed, the authority will forward the records of inquiry to the disciplinary authority for major penalties.

The disciplinary authority for major penalties may either on the basis of the records or on further examination of witnesses impose appropriate penalty.

(xvi) If IA is changed during the course of an inquiry, the succeeding IA may act on the evidence recorded by the predecessor IA, and/or recall the witnesses for examination if needed.

(xvii) On conclusion of the inquiry a report will be prepared containing the charges and statement of imputation of misconduct/misbehaviour, defence of the employee, assessment of evidence and findings and each charge.

(xviii) IA shall forward to the disciplinary authority the Inquiry Report, the statement of defence, evidence produced during the course of inquiry, written briefs, if any, submitted by the presenting Officer and the accused employee, and orders, if any, made by disciplinary authority and inquiry authority in regard to the inquiry.
Chapter 30

MAIN STAGES FOR HOLDING AN INQUIRY UNDER RULE 14 OF CCS (CCA) RULES, 1965

1. PRELIMINARY HEARING:

The inquiry officer will -

(i) ask the Suspect Public servant (SPS) whether he is guilty or has any defence to make. If he pleads guilty to all or any of the charges, this will be recorded by the Inquiry Officer. He will himself sign the record and obtain the signatures of the Govt. servant thereon.

(ii) order regarding (a) inspection of listed documents by the SPS within 5 days extendable by another 5 days, (b) submission by him of a list each of additional documents and defence witnesses within 10 days extendable by another 10 days.

(iii) order supply of copies of statements of listed witnesses, if any, recorded during investigation, to the SPS.

2. INSPECTION OF DOCUMENTS:

(i) Inspection of listed documents may be given by P.O. or any other responsible officer. SPS can take extracts or have complete copy. Photostate copies may be supplied if requested by the SPS and if feasible.

(ii) Hearing, if necessary, to decide about the relevance of additional documents and facts admitted by the SPS.

(iii) Inspection of additional documents by the SPS.

3. REGULAR HEARINGS:

(i) Production of oral and documentary evidence on behalf of the disciplinary authority:

(a) The documents which are admitted as genuine by the SPS will be marked as exhibits S-1, S-2, etc. and taken on record of the Inquiry. Listed documents not admitted by the SPS will be introduced through witnesses and marked as above at that stage.

(b) Examination-in-chief of SW-1(State Witness-1) by or on behalf of the Presenting Officer.

(c) Cross-examination of SW-1 by the SPS or his Defence Assistant.

(d) Re-examination of SW-1 by or on behalf of the Presenting Officer.
(e) The Inquiry Officer may, if he so wishes, ask any questions to SW-1 to clarify any point. (Examination of other State Witnesses, one by one will be done in this manner).

(f) Statements of witnesses will be recorded in the narrative form normally and signed by the witness and the Inquiry Officer.

(ii) Asking the SPS to state his defence.

(iii) Asking the SPS whether he would like to examine himself as his own witness. If he agrees, he will be one of the Defence Witnesses.

(iv) Production of oral and documentary evidence on behalf of the SPS.

(a) The Defence documents which are not objected to by the P.O. will be marked as exhibits, D-1, D-2, etc. by the Inquiry Officer and taken on record of the inquiry.

(b) Examination-in-chief of DW-1 (Defence Witness-1) by the SPS or his Defence Assistant.

(c) Cross-examination of DW-1 by or on behalf of the P.O.

(d) Re-examination of DW-1 by the SPS or his defence assistant.

(e) The Inquiry Officer may, if he so wishes, ask any questions to DW-1 to clarify any points. (Examination of other defence witnesses, one by one, in the same manner).

(v) The Inquiry Officer must question the SPS on the circumstances appearing against him in the evidence if he (SPS) has not examined himself as his own witness. The Inquiry Officer may question the SPS if he has appeared as his own witness.

4. ARGUMENTS/FILING OF WRITTEN BRIEFS:

(1) Arguments by the Presenting Officer or filing of a written brief by him, with a copy to the SPS.

(2) Arguments by the Defence Assistant or the SPS or filing a written brief by him. No copy is to be given to the Presenting Officer.

5. MAINTENANCE OF DAILY ORDER SHEET:

The inquiry officer will maintain a daily order sheet for each day of the inquiry indicating who were present and what transpired.

6. WRITING OF THE REPORT BY THE INQUIRY OFFICER:

The Inquiry Officer will evaluate the evidence and submit his report to the disciplinary authority along with all records of the Inquiry.
Chapter 31

EVALUATION OF EVIDENCE

1. The primary functions of an inquiring authority are to record the evidence, to evaluate the evidence and to give his findings on each Article of charge. Having recorded the evidence, the Inquiring Authority is required to evaluate the same so as to decide whether a reasonable conclusion can be drawn on the basis of preponderance of probability, regarding the guilt or otherwise of the Charged Officer.

GENERAL PRINCIPLES OF EVALUATING EVIDENCE

2. The evidence adduced during the inquiry is of two types namely oral and documentary. Oral evidence includes all statements which the Inquiring Authority permits to be made before it by witnesses, in relation to matters of fact under inquiry. The documentary evidence includes all documents produced for inspection and admitted in the inquiry. Before the Inquiring Authority embarks upon the assessment of the evidence, it is essential for him to understand certain general principles which he would be required to apply to this task.

(i) The first principle is that the standard of proof in a departmental inquiry is preponderance of probability and not proof beyond reasonable doubt as required in Criminal trials. This principle has been enunciated by the Supreme Court in the case of Union of India Vs Sardar Bahadur (SLR-1972-SC.355) in the following words:

"A disciplinary proceeding is not a Criminal case and the standard of proof is preponderance of probability and not proof beyond reasonable doubt."

(ii) The second principle is that the burden of proof rests on the disciplinary authority, i.e. it would be the responsibility of the Presenting Officer to establish the charge first and then only the Charged Officer would be required to controvert the same. It is not for the Charged Officer to prove his innocence or absolve himself from the charges. While evaluating evidence, it is the duty of the Inquiry Officer to see that the charges have been established by the Presenting Officer on behalf of the Disciplinary Authority first by adducing evidence before him during the course of Inquiry. If, the P.O. fails to bring home the charges, no duty is cast on the Charged Officer to prove his innocence.

(iii) A further requirement is that the conclusion must rest on the evidence and not on matters outside the record. And, when it is said that the conclusion must rest on the evidence, it goes without saying that it must not be based on a misreading of the evidence.

(iv) While drawing inferences and conclusion, the Inquiry Officer is required to assess the evidence which has been produced before him during the enquiry. He is not permitted to refer to the materials which have not been produced
during the enquiry and for which the Government servant had no opportunity to examine and to rebut explain the same. It has also been help that Inquiry Officer cannot be a witness against the suspected public servant and the Inquiry Officer must in particular, avoid, giving any weight, however minute, to personal knowledge of any matter, against the Charged Officer.

v) Suspicion, however, strong, has no evidentiary value whatsoever. Conjectures or surmises cannot take the value whatsoever. Conjectures or surmises cannot take the place of proof or evidence. In the case of Union of India Vs. H.R. Goel (AIR 1964-SC 364) where the allegations against the officer was that he (Shri H.C. Goel) on meeting Director (Administration), CPWD, at his residence apologized for not having brought 'Rasgullas' for the children and also took out his wallet and showed a folded paper which looked like a hundred rupee note, it was held that the evidence showed mere suspicion which could not be the basis for proving the charges framed against him.

It will thus be seen that the Inquiry Officer cannot rely on his personal knowledge of facts, and only the evidence produced during the inquiry is to be considered and the Inquiry Officer should not refer to the materials which have not been produced during the inquiry and for which the Government servant did not have the opportunity to examine, refute or explain the same. Moreover, no conclusion should be arrived at arbitrarily, without evidence or on misreading of the evidence. These requirements are basic and cannot be whittled down in a departmental inquiry. Similarly, mere suspicion cannot take the place of evidence or proof. (A.R. Srinivasan's case S.C.66).

3. All these principles are to be applied by the Inquiry Officer to report to the disciplinary authority whether in the context of the evidence adduced before him, the Articles of Charge have been proved, disproved or not proved. It is, therefore, essential to explain these terms. The Indian Evidence Act defines them as:-

**PROVED:** A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case to act upon the supposition that it exists.

**DISPROVED:** A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

**NOT-PROVED:** A fact is said not to be proved when it is neither proved nor disproved.

4.0 MATERIAL EVIDENCE

4.1 In order that the articles of charge may be held as proved or otherwise there is always material evidence which may be oral or documentary, the production or non-
production of which will affect the outcome of the enquiry. If such material evidence is not produced, during the inquiry, the article of charge cannot be held as proved.

4.2 Material Evidence differs from case to case and it is not possible to give an exhaustive list. However, the following few examples may explain the importance of material evidence:

i) Where the allegation is that the employee was found to be sleeping during duty hours, the person who actually saw him sleeping and reported the matter, is a material evidence.

ii) An eye witness to an incident is always a material witness, but a person reaching the place of occurrence after the event is not a material witness. The reason is that the latter gathers his information from other persons and hence his evidence is merely hearsay evidence.

iii) In the case of insubordination, the officer with whom the employees misbehaved is a material witness (Ranchorbhai's case '56).

4.3 In the evaluation of evidence, the Inquiry Officer should give more weightage to the material evidence adduced during the enquiry. The material witness or documents, where the allegations are based on documents, reveal the story. Hence, scanning of material evidence with care will help in the correct appreciation of the circumstances of the case.

5. HEARSAY EVIDENCE

5.1 The Supreme Court has held in the case of State of Haryana Vs Rattan Singh AIR 1977 (SC 1512) that hearsay evidence is admissible in departmental inquiries. It has observed that there is no allergy to hearsay evidence provided it has reasonable nexus and credibility, but departmental authorities and administrative tribunals should not swallow what is, strictly speaking, not relevant under the Indian Evidence Act.

5.2 In this case, none of the passengers, who traveled in the bus without ticket but after making payment, were examined. Only the checking Inspector was examined, who had stated that the passengers refused to give written statements. In the case of Rattan Singh, the Supreme Court took the view that the sufficiency of evidence in departmental enquiry is beyond the scrutiny of the Courts. The Court further observed that the evidence of the checking Inspector provided some evidence relevant to the charge. It was not necessary to insist the passengers who traveled in the bus, on that day should be chased and brought before the departmental inquiry before a valid finding can be recorded. The Court, therefore, upheld the removal from service of Shri Rattan Singh.

6. STATUS OF THE WITNESS

While evaluating evidence of the various witnesses produced on behalf
of the disciplinary authority and the charged officer, the golden rule is that "ALL WITNESSES ARE EQUAL" irrespective of their rank or status in the Govt. A higher credence value cannot be attached to a piece of evidence for the only reason that the witness holds a status higher than the one deposing to the contrary. However the evidence of an independent witness is to be given higher weightage than an interested witness.

7. VALUE OF EVIDENCE WHICH CANNOT BE SUBJECTED TO CROSS EXAMINATION

The right of cross examination is a valuable right given to the charged officer in departmental inquiries and denial of the same vitiates the enquiry. Hence, any evidence which cannot be subjected to cross examination should not be accepted. For example statements of witnesses recorded during preliminary investigation who are not produced during the inquiry are not to be relied upon. Similar is the fate of the affidavits. The person swearing to the affidavit may be called for cross examination and the value to be attached to an affidavit should be decided in each case on the result of the cross examination etc.

8. VALUE OF TAPE RECORDED EVIDENCE

The tape recorded evidence can be relied upon during a departmental inquiry. In the case of Pratap Singh Vs. State of Punjab (AIR 1964 SC 72), the Supreme Court has ruled that the mere fact that there is a possibility of certain kind of evidence to be tampered with does not preclude it from being considered since almost all kinds of evidence can be tampered with. The court, however, ruled that while considering such evidence, it should be evaluated in the context of the total circumstances of the case.

9. VALUE OF THE EVIDENCE OF THE INVESTIGATING OFFICER

Whereas it is a fact that the evidence of the investigating officer is important as it helps in unfolding of the story, but since he cannot be a material witness or an eyewitness of the incident, his evidence alone cannot be the basis of holding of the articles of charge as proved.

10. ASSESSING THE VALUE OF ORAL EVIDENCE PRODUCED ON BEHALF OF DISCIPLINARY AUTHORITY AND CHARGED OFFICER.

It is common knowledge that both parties in a departmental proceeding come up with different versions which are at times diametrically opposed, of the incident or happening. While assessing the value of their respective evidence, the Inquiry Officer should give more weight to the one which is more probable, coherent and consistent. The evidence which is apparently improbable and full of discrepancies should be totally discarded.

11. EVALUATION OF DOCUMENTARY EVIDENCE

The evaluation of documentary evidence is easier than the evaluation of oral evidence. Since the departmental enquiries are basically fact-finding enquiries, the
value of documentary evidence in such enquiries is slightly higher than the value of oral evidence for the simple reason that such evidence by its very nature is more exact and precise. Further such evidence is more reliable. This is not meant, in any way, to depreciate the value of oral evidence. Where the oral evidence is direct, unequivocal and emphatic, it has the same value as accorded to the documentary evidence.

12. EFFECT OF NON-PRODUCTION OF MATERIAL DOCUMENTS

The function of Inquiring Authority is to find out the truth in a case and the Presenting Officer is there to assist him in every way to achieve this object. Hence, if some document material to the fact of the case is in the possession of one party, it would be its duty to produce it before the Inquiry Officer. Failure to do so would raise a presumption adverse to the party possessing it.

13. EVIDENTARY VALUE OF F.I.R./ORIGINAL COMPLAINT

The original complaint/F.I.R. is an important document since it throws light on the circumstances of the case. It, however, does not by itself, constitute substantive evidence. The evidentiary value of a complaint/F.I.R. would depend on whether the complainant, the person who lodged the F.I.R. is examined during the enquiry and subjected to cross-examination by the accused. The non-examination of the complainant would not make the complaint totally inadmissible in departmental enquiry. In a case where disciplinary proceedings were initiated on receipt of a complaint by an authority and the complainant was not examined, the complaint would be admitted on the testimony of the authority who received it. In such cases, the evidentiary value of the complaint is not such unless it is corroborated in material details by other evidence oral, documentary or circumstantial. But, where the complaint itself is of a hearsay character, it has no evidentiary value.

14. DOCUMENTARY EVIDENCE IN SUPPORT OF HANDWRITING OF THE ACCUSED.

In the case of the documentary evidence where the handwriting of the suspected person is in doubt, it is always better to obtain the advice of the experts rather than to believe the testimony of the ordinary persons who have received no training to compare handwritings. If the expert appears before the Inquiry Officer, he must state reasons for his opinion expressed during the proceedings. The Inquiry Officer should evaluate the opinion of the expert on the basis of overall picture emerging from the deposition and cross-examination like any other witness. But, where the opinion of the expert contained in the report or certificate and the document has not been challenged, then the evidentiary value of the report will depend on the grounds mentioned for holding that opinion. The opinion expressed is not to be accepted mechanically. It is the duty of the Inquiry Officer to apply his mind to such opinion in the context of the circumstances of the case and reach independent conclusions.

15. CIRCUMSTANTIAL EVIDENCE

Circumstantial evidence is the evidence which does not prove the existence or non-existence of the principal fact by direct evidence but which establishes by direct evidence a circumstance or a chain of circumstances by which the existence or
otherwise of the principal fact may be inferred. In criminal proceedings, the accused can be held guilty on circumstantial evidence provided the following conditions are satisfied:

i) The primary facts or circumstances from which inference of guilt is drawn are duly proved by direct, oral or documentary evidence;

ii) there is no missing link in the circumstantial evidence and the inferential links are accurately based on legal presumptions; and

iii) the chain of the circumstances must exclude a hypothesis of innocence to a reasonable mind.

But in the departmental proceedings, the rigors of the procedure of criminal trial are not applicable as the standard of proof demanded in departmental enquiries is that of preponderance of probability. The Inquiry Officer should ensure that the principles laid down in (i) and (ii) above are compiled with. As regards (iii) above, the Inquiry Officer should see that the criterion of preponderance of probability is satisfied before coming to a conclusion on the basis of circumstantial evidence.
Chapter 32

PRELIMINARY INVESTIGATION STAGE

Misconduct in employment falls under two distinct categories viz. cases having a vigilance angle and cases not having a vigilance angle. Allegation of bribery, corruption, forgery, falsification of records, submission of false claims, possession of assets disproportionate to known sources of income, etc. are known as cases having a vigilance angle. Cases such as unauthorised absence, lack of devotion to duty, insubordination, etc. are known as cases not having a vigilance angle. The classification of cases on this basis is relevant from the angle of consultation with the Central Vigilance Commission.

Information relating the misconduct of employees may be gathered by the disciplinary authority from a number of sources. Such sources of information are known as complaint. In the context of disciplinary proceedings, even a press report or an audit report providing information about the misconduct of an employee will be treated as a letter of complaint. Generally, a disciplinary case commences with the receipt of a complaint. The complaint may or may not, contain verifiable allegation against a government servant. In the latter event, the contents of the complaint may have to be examined so as to determine as to whether there is any prima facie case against any employee. This process is known as Preliminary Investigation. Preliminary investigation is also used for collecting evidence against the Suspected Public Servant (SPS). Depending upon the nature of the case, the matter may be referred to the CBI (at the level of the Chief Vigilance Officer), or to the local police authorities or may be departmentally investigated. Departmental preliminary investigation is carried out when the allegation relates to a misconduct other than a criminal offence and the same is capable of verification within the department. In case, the investigation of the complaint calls for the exercise of police powers, the same must be handed over to the police or the CBI.

Before commencing preliminary investigation departmentally, generally the complainant may be contacted to provide evidence if any at his disposal in support of the allegations made by him. Preliminary Investigation may be carried out either by the Vigilance Officer himself or it may be handed over to any other officer. In either case, the Officer carrying out Preliminary Investigation should sufficient knowledge about the subject relating to the complaint. He should be conversant with not only the rules and regulations relating to the transaction but also the procedures and practices. The preliminary Investigation Officer should identify the documents required for verifying the allegations and the persons who can throw light in the matter. After chalking out the programme, in one swift move, all the documents required should be brought within his custody. Once the persons concerned become aware of the fact that a misconduct is being investigated, it is likely that they will attempt to tamper with the records and eliminate evidence. To obviate this, the Preliminary Investigation Officer should maintain absolute confidentiality and act swiftly. The persons who can provide information must be contacted and tactfully interrogated. Their statements should be recorded and signatures obtained. In case the persons whose conduct is being investigated are in custody of the records or other evidence required for the
investigation and there is a possibility of the evidence being tampered, it is appropriate to consider their transfer.

It is not mandatory to contact the Suspected Public Servant during the Preliminary Investigation. However, there is no ban on contacting him either. A decision in this regard will have to be taken by the Preliminary Investigation Officer, depending upon the nature of the case. In this connection, it is worth considering that at times, the SPS, being the person most familiar with the case, may be able to give a satisfactory explanation in respect of the allegation. If the explanation given by the SPS is satisfactory, then it may save the unnecessary effort in the preparation of Charge Sheet, conducting the Inquiry, etc. and then dropping the charges. The long period of uncertainty during which the individual concerned will be tense and de-motivated will result in loss to the organisation also.

On conclusion of the Investigation, the Preliminary Investigation Officer is required to submit a report which will contain the facts collected by him and an analysis of the same. He is also required to indicate as to whether a prima facie case is established or not. The report should specifically indicate as to whether an opportunity was offered to the SPS, if so whether he availed the same. The report together with the documents collected in the course of the Preliminary Investigation should be submitted to the Disciplinary Authority who will take a decision as to whether disciplinary action should be initiated against the SPS.

If the case is one having vigilance angle and the officer involved is a Category A Officer, the disciplinary Authority should forward the Preliminary Investigation report and other documents to the Central Vigilance Commission, through the Chief Vigilance Officer and obtain First Stage Advice. {Gazetted Officers of the Govt., Board level appointments in the PSUs, Officers in Scale –III and above in the public sector Banks and Officers in the scale of pay whose minimum is 2825/= or above (IV Pay Commission scale) in local bodies, co-operative societies and other Societies receiving grant from the Central Govt., autonomous and other similar bodies belong to Category A for this purpose.}
Chapter 33

FUNCTIONS OF INQUIRY OFFICER

Introduction

1. Basic objective of the Inquiry Officer (IO) is to conduct Inquiry, record evidence, analyse the same and give a finding as to whether the charges are proved or not. For achieving this objective, the IO is required to carry out a number of activities. Broadly, the activities fall under the following categories:

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

2. While items (a) to (d) above are self explanatory, (e) may require some elaboration. Certain actions are required to be taken by the IO during more than one of the above stages of the Inquiry e.g. writing the Daily Order Sheet, issue of certificates of attendance, etc. These aspects are covered at the earliest occurrence of the action. For example, the procedure for writing Daily Order Sheet is explained only under (a) above because the IO starts writing daily Order Sheets during the pre-hearing stage itself. Besides, this write up covers only the basic functions to be performed by the IO till the submission of the IO’s Report. This write up does not cover certain unusual circumstances, which may arise during the course of the inquiry, such as the non appearance of CO despite repeated requests, or the custodian of the additional documents intimating their non availability etc. These off the track circumstances are handled separately.

Pre-hearing stage

3. The function of IO commences from the moment he receives appointment order. He is required to take a number of actions even before the actual hearing of the case commences. The same are as under:

   a) Verifying the appointment order and the enclosed documents
   b) Preparation of the Daily Order Sheet
   c) Acknowledging the appointment.
   d) Analysing and understanding the Charges
   e) Fixing the date for Preliminary Hearing
   f) Sending communication to the parties about hearing.
   g) Informing the controlling officers of Charged Officer and Presenting Officer
   h) Ascertaining as to whether the Charged Officer has finalised a Defence Assistant and if so informing the Controlling Officer of the Defence Assistant
4. It is desirable that the IO scrutinises the order appointing him as IO and the enclosed documents thoroughly. Firstly, the appointment of Inquiry Officer is required to be made by the Disciplinary Officer and no one else. When the President is the Disciplinary Authority, the order of appointment of the IO may be signed by any authority who is competent to sign communications on behalf of the President. At any rate the Order should indicate that the appointment of IO is being made by the President only. Any defect in this regard will lead to an incurable defect in the Inquiry. The complete proceedings will be liable to be quashed if the IO had been appointed by some one other than the Disciplinary Authority. Secondly, in case there is any patent defect in the Charge Sheet, the IO may bring it to the notice of the Disciplinary Authority well in time so that the defect can be cured. In this context it is essential that IO should not take upon himself the role of refinement 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. The difference between the two is explained in the succeeding paragraph.

5. An article of Charge in a Charge Sheet read: “… He exhibited conduct unbecoming of a Government Servant and thereby violated rule 3 of the CCS (CCA) Rule 1964”. It is obvious that this is a clerical mistake because exhibition of conduct unbecoming of a Government Servant is a violation of Rule 3 of the CCS (Conduct) Rules 1964 and not CCS (CCA) Rules. Such errors are known as patent errors. Similarly, any variation in the designation of the individual between Annexures I and II may also fall under the category of patent errors. On the other hand, if the IO feels that the list of documents in Annexure - III or the list of witnesses in Annexure – IV require to be elaborated, such matters are prima facie subjective. Besides, they will amount to enhancing the quality of the Charge Sheet. Suggesting such modifications will be beyond the purview of the IO.

6. Similarly, there may be errors in the enclosed documents also. Charge Officer while denying the Charges might have quoted a reference, which is at variance with the actual reference number of the Charge memo. It is desirable that such defects are also brought to the notice of the Disciplinary Authority immediately, so that they may be rectified in time. It may be noted that the above mentioned defects are likely to consume time in the conduct of inquiry. IO is responsible for the expeditious conclusion of the Inquiry. Therefore the IO is well within his rights to bring these defects to the notice of the Disciplinary Authority so that they may be rectified in time.

7. Daily Order Sheets are the authentic records of the Inquiry Proceedings. They are like the diary of events pertaining to the Inquiry. There is a popular misconception that Daily Order Sheet is required to be made only during the Hearing stage. Daily Order Sheets are in fact required to be made on all the days whenever there is a progress in the case, irrespective of whether there is a hearing or otherwise. The first Daily Order Sheet is required to be made on the day when the IO receives his appointment order. Daily Order Sheet is required to be made on any day when IO receives or sends a communication relating to the case.

8. It is a good practice for the IO to acknowledge his appointment. This will keep the Disciplinary Authority informed that the IO has taken charge of the matters and is proceeding with the task. In case the IO is not able to take up the appointment, on account of any valid reason, it is all the more important that the Disciplinary Authority
is informed well in time. While a person is not expected to turn down the appointment as I O due to personal reasons, there may be circumstances wherein the I O 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 O should inform the Disciplinary Authority without any delay together with the complete details.

9. Although the I O will be giving his finding in the final report based on the evidence adduced in the Inquiry, it is necessary for him to analyse and understand the charges at the earliest opportunity.

10. Basically, a charge is made up of a number of facts and each fact is required to be established through evidence. Inquiry Officer should identify the facts on which a given charge is based and should be able to link the facts to the evidence listed in Annexures – III and IV.

11. While fixing the date for the hearing, the I O should consider the location of the parties concerned and the travel time required. Normally the parties concerned should be in the same station. However, there may be cases wherein one or both the parties may be staying in a station different from the one where the I O is posted. Special care should be taken in respect of the cases involving unauthorised absence. In such cases, normally, the organisations correspond with the permanent address of the Charged Officer and the same may be different from the place of posting. In addition to the above, if any of the parties had made any request regarding the date for the hearing, the same may be taken into consideration while fixing the date for the case. I O should advise the parties concerned to make such requests in writing and consider the same only where they are reasonable.

12. Communication to the parties must be issued well in time so that they may be able to prepare for attending the hearing on receipt of the communication. Besides, I O should personally check the address of the communication and also ensure that the same is actually despatched after signature by the I O. Copies of the communications should be sent to the controlling officers of the Presenting Officer and the Charged Officer as well. The Controlling Officers should also be specifically requested to spare the PO and CO for the hearing. The Charged Officer should be informed about his right to engage a Defence Assistant. He should also be asked to indicate the Defence Assistant in case identified, along with the willingness of the Defence Assistant and the details of the Controlling Officer. In case the C O informs the I O about the finalisation of a person as his Defence Assistant sufficiently well before the date of hearing, I O should send a communication to the Controlling officer of the Defence Assistant to spare the Defence Assistant for the hearing. At this stage, I O should not make any commitment to accept a particular person as Defence Assistant. Appointment of any person chosen by the CO as Defence Assistant can be made only when the person turns up before the I O and satisfies the I O about his identity and eligibility to function as Defence Assistant.

Preliminary Hearing Stage

13. The phase of the hearing from the first appearance of the parties before the I O till the stage of recording of evidence is known as Preliminary hearing. During Preliminary Hearing, I O is required to perform the following actions:
a) Making arrangements for conducting the hearing
b) Setting the stage for smooth conduct of hearing
c) Asking the statutory questions
d) Finalisation of the question of Defence Assistant
e) Fixing dates for Inspection of the originals of the documents
f) Fixing dates for the submission of the list of additional documents and witnesses required by the C O for the purpose of his defence
g) Finalisation of the documents and witnesses admissible for defence
h) Taking action for procuring the additional documents required for the defence.
i) Settling the issue of disputed documents
j) Taking the documents on record
k) Issue of certificates of attendance to the parties
l) Deciding on the requests for adjournment

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

15. Disciplinary Inquiry is an activity wherein tempers are likely to sore. The Charged Officer very often happens to be a charged person. Under such a charged atmosphere, the smooth conduct of Inquiry becomes difficult. Smoother the inquiry, speedier and easier will be the disposal. Inquiry Officer should therefore, take conscious steps to make the inquiry as smooth as possible. Through knowledge of the rules and instructions relating to the inquiry is an essential requirement for this purpose. But this is not all. In addition to the above, the I O should be fair and neutral in his dealings. In this respect, the I O should not only be fair and neutral but also endeavour to create such an impression in the minds of the parties to the proceedings. Thus, transparent fairness is the requirement on the part of the I O for conducting the proceedings in a smooth way. In addition to transparent fairness and neutrality, good practices of interpersonal relations will also go a long way in making the inquiry smooth.

16. At the commencement of the inquiry, it is advisable for the I O to check up with the C O as to whether he has faith and confidence on the I O. and record the reply of the C O. This is not a mandatory requirement, but this question is likely to create an impression that the inquiry has been very transparent. In case, the C O expresses any reservation about the neutrality of the I O, he must be apprised of the further course of action open to him for change of I O. Thereafter, the I O is required to ask the following questions:-

a) Have you received the Charge Sheet?
b) Have you understood the Charges?
c) Do you admit the Charges?

17. Normally, the answers expected to be “Yes Sir”, “Yes Sir” and “No Sir”. There may be extraordinary cases wherein the C O may contend that he had not received the charge sheet. Proof of delivery of charge Sheet is one of the enclosure to the order of appointment of the I O. However, if any C O successfully creates a doubt about the delivery of Charge Sheet, I O may make arrangements for providing a copy of the Charge Sheet. As regards the understanding of the Charge Sheet, depending upon the level and educational qualification of the Charged Officer, the I O may explain the Charges to the C O. As regards the admission or otherwise of the Charges, the Charged Officer should not try to guide or persuade the Charged Officer to admit the Charges. On the other hand, even if the C O admits the charges, it is desirable for the I O to caution the C O that an unconditional and unambiguous admission will have to be given in writing and the Disciplinary Authority may impose the penalty on the basis of the admission.

18. Often, the Defence Assistant may enter his first appearance at this stage of the Inquiry. Defence Assistant may belong to any one of the following categories:

a) Serving Government Servant
b) Retired Government Servant
c) Legal Practitioner

The above category persons may be from the same station where the Inquiry is being held or from a different station.

19. As regards the appointment of a serving Government servant as a Defence Assistant, the I O has the following duties:

a) Check the identity of the person concerned i.e. whether he is in fact a serving Government Servant i.e. by checking his identity card etc. (A Government Servant under suspension may be allowed to officiate as Defence Assistant)

b) Ask him to confirm that he is not having more than two cases in his hand other than the case in question. Record the same in the Daily Order Sheet and obtain the signature of the Defence Assistant.

c) Write a letter to the controlling officer of the Defence Assistant about the fact that he has been allowed to officiate as Defence Assistant in the instant case. It is desirable that this letter is dispatched to the controlling officer of the Defence Assistant direct, rather than handing over the same to the Defence Assistant for delivery.

20. As regards the appointment of a retired Government Servant as a Defence Assistant, the I O has the following functions:

a) Ensure that the Defence Assistant has retired from the Central Government. If necessary, you may ask him to produce his Pension Payment Order
b) Ensure that the retired Government Servant is not a Legal Practitioner. If he were a Legal Practitioner, the provisions the next para will apply.

c) Ensure that the retired Government Servant was not dealing with the case in question before his retirement.

d) Ensure that he does not have more than four cases (other than the present one). For this purpose, you may have to rely on his statement only.

21. When the Presenting Officer is a Legal Practitioner, the Charged Officer acquires a right to engage a legal Practitioner as his Defence Assistant. Otherwise, the Charged Officer may engage a Legal Practitioner only with the permission of the Disciplinary Authority. Hence, in such cases, where the Presenting Officer is NOT a Legal Practitioner, the I O should advise the Charged Officer to apply to the Disciplinary Authority for engagement of Legal Practitioner as Defence Assistant. Under no circumstance, the I O should dispose of any request for engagement of Legal Practitioner in such cases.

22. As regards the engagement of Defence Assistant from outstation, the I O has power to grant permission. But while deciding such requests, he should take into account the extra burden on the exchequer.

23. Inspection of the originals of the listed documents is a valuable right of the Charged Officer. During Preliminary Hearing, the I O is required to fix a date for the inspection of the Originals of the listed documents. While fixing the date, the provisions of the rules are to be adhered to. The convenience of the parties may be ascertained and accommodated to the extent possible. Inspection of documents is basically the responsibility of the Presenting Officer and the I O after fixing a date for the inspection has to await the outcome of the inspection.

24. Another important function during the first hearing is fixing the date for submission by the CO, of the list of additional documents required for the purpose of defence and the defence witnesses. It is desirable that the IO prescribes a format for the submission of the above information. The documents required by the CO for the purpose of his defence may fall under the following categories:

- Government documents, which are required to be obtained by the I O.
- Private documents which may be at the disposal of the CO himself.

25. Relevance of both the above mentioned categories of documents are required to be examined by the I O. Even if the documents are of personal nature and are available with the CO himself, the I O should allow the submission of the documents only if he is convinced about their relevance. It is also necessary that before I O takes a final view on the relevance of the defence documents and witness, opportunity is given to the parties to make submission on the issue. Although, the question of relevance falls within the purview of IO, in case the PO has any submission to make in this regard, he must be allowed to do so. Final orders of the I O in this regard (allowing or rejecting the request of the CO for any document or witness) must be a reasoned order.
26. On being satisfied about the relevance of the document, the I O should write to the custodian of the document for making the same available for the purpose of Inquiry. Often, the I Os entrust this responsibility to the P Os. This is not proper. The documents relied upon by the C O should not be allowed to be handled by the opposite Party, i.e. PO. This may give room to the allegation by the C O that the P O might have tampered with the documents. It is therefore necessary that I O obtains the documents direct. No doubt, the same will be made available to both the parties and copies may also be provided where necessary and feasible before they are relied upon by the I O.

27. In the first hearing after the inspection of the original documents, the I O should ascertain from the parties about the outcome of the inspection. He should specifically inquire the C O as to whether the listed documents are admitted or denied by the CO and record the reply. Only those documents, which are admitted by the C O, should be taken on record. The documents taken on record should be marked as S E-1, S E-2, etc. (State Exhibit). While taking the documents on records, the signature of the parties must be obtained on the document itself. As regards the disputed documents, the Presenting Officer is at liberty to introduce the same through the oral witness. Even after admitting a document, the C O is at liberty to challenge its contents. The admission made by the C O is confined only to the genuineness of the document and does not mean that the CO is admitting the veracity of the contents.

28. During all the hearings when parties or witnesses appear before the I O, is required to issue certificate of attendance to all those who appear before him. The certificate should indicate the name of the person, the capacity in which he has attended the hearing, and venue, date and duration of the hearing. This will enable the person concerned to claim his TA/DA.

29. Requests for adjournments should be carefully handled. While reasonable opportunity should be provided to the C O, he should not be allowed to take the proceedings for a ride. Any request for adjournment will have to be supported by sufficient proof about the circumstances warranting adjournment. I O is at liberty to demand proof in this regard. Another important fact about the adjournment is that the details of the party who requested for adjournment and the reasons under which it was agreed to or not agreed to must be properly recorded in the Daily Order Sheets.

**Regular hearing Stage**

30. During regular hearing stage, the I O will continue to make the Daily Order sheets whenever there is a progress in the case. Similarly, he will be issuing the certificates of attendance to all those who attend the hearing. In addition to the above, the I O is required to take the following actions during the regular hearing stage:

a) Summoning witnesses
b) Monitoring the conduct of the examination of witnesses
c) Recording the statements of the witnesses
d) Recording the demeanor of the witnesses
e) Deciding objections about the questions raised during examination of witnesses.
f) Deciding requests for introducing additional witnesses.
g) Deciding requests for recalling witnesses
h) Asking the 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 and the C O.

31. Summoning the witnesses is the responsibility of the I O. However, in case the party concerned promises to take up this responsibility, I O may leave it to the party, i.e. P O or C O. Sometimes the party may ask for a letter from the I O and may promise to ensure the presence of the witness. In such circumstances, the I O should record in the Daily Order Sheet, that “the P O has promised ensure the attendance of the witnesses and hence no communication is being sent.” Once, the relevance of a Defence Witness has been accepted by the I O, it is the responsibility of the I O, to summon the witnesses. This responsibility cannot be passed on to the C O. A Government servant who has been cited as a witnesses, State Witness or Defence Witness is bound to honour the request of the I O appear before him. If he refuses to attend, the matter may be reported to his controlling officer for initiation of suitable action against him. However, as far as the private witnesses are concerned, there is very little that the I O can do. Only in cases notified under the provisions of the Departmental Inquiries (enforcement of attendance) Act, 1972, he acquires a statutory power to enforce the attendance of the witness.

32. The following issues are relevant in the context of summoning of witnesses:

♦ Style of communication: I O should consider that the witnesses are doing a service to the organisation by tendering evidence and the communication should accordingly couched in a polite language.

♦ Number of witnesses to be summoned on a particular day: it is necessary for the I O to appreciate the valuable time of the witnesses and every effort must be made to ensure that the witnesses are not required to wait unnecessarily for their turn. Besides, one witness should not be present when another witness is tendering evidence. Hence, arrangements will have to be made by the I O for the reception and waiting of the witnesses who are waiting for their turn to be examined. It may be very difficult to assess the time likely to be consumed in the examination of an individual witness. However, the time required for examination of witnesses must be estimated as accurately as possible and the appropriate number of witnesses must be summoned for a particular day. It is also desirable indicate the time when a witness is required.

♦ Journey time for reaching the place of the Inquiry: In respect of the outstation witnesses, the communication should be sent sufficiently well in advance to enable the witness to plan for the journey for reaching the venue of the inquiry.

33. The I O is responsible for smooth conduct of the inquiry. Hence, he should direct the parties to play their respective roles for examination-in-chief, cross examination and re-examination. Besides, the I O should also ensure that the witness is treated with dignity by the parties who examine him. After, the three stages of the
examination is over, the I O should thank the witness for having presented himself and ask him to wait (may be in the adjoining room, if a further witness is going to be examined) till the statement is typed and got signed. Another important aspect to be taken care of by the I O at this stage is that in case the C O does not cross examine any State Witnesses, it must be properly recorded in the Daily Order Sheet as “Charged Officer did not cross examine the witness despite the opportunity provided to him”

34. The statements made by the witnesses are a vital document for determining whether or not the C O is guilty. Hence utmost care must be shown by the I O in recording the statements accurately. Normally, during examination-in-chief the witness is asked a single question and makes a long deposition. Cross examination and re-examination are usually done in question answer form. The statements as well as questions and answers are to be recorded verbatim.

35. Demeanor of the witness is an important element in assessing the credibility of the witness. Under the Criminal Procedure Code, Magistrates are also required to note the demeanor of the witnesses. Hence, the I O should keep on noting the demeanor of the witness thorough out. This must be referred to at the time of evaluation of evidence.

36. Although the provisions of the Indian Evidence Act 1872 are not applicable to the departmental inquiries, the general principles are applicable. Thus, during examination in chief and re-examination only relevant questions should be asked and leading questions should not be asked, except under certain exceptional circumstances. During cross re-examination, the credibility of the witness can be assailed. Although leading questions are permitted during cross examination, certain types of questions are prohibited. I.e. questions, which are totally baseless, indecent and scandalous questions, questions, which are intended to annoy the witness, are all prohibited during cross examination. During examination of witnesses, the contesting parties are likely to raise objections to the questions put by the opposite side. The I O should have a clear idea as to what are the permissible questions and what are not. The objections to objections should be disposed off immediately.

37. The Presenting Officer is entitled to lead all witnesses listed in Annexure IV to the Charge Sheet. The Charged Officer is required to submit, during the Preliminary Hearing, a list of witnesses required by him. He is entitled to call those witnesses who, in the opinion of the I O are relevant for the case. In case either of the parties required any additional witness a later stage, the I O should consider the in terms of Rule 14(15) of the CCS (CA) Rule 1965. The difference between the witness required for filling up a gap and removing an inherent lacuna is not made clear in the rules. It would be appropriate for the I O to decide the request on the basis of whether it is in the interest of justice. Any request for recalling a witness should also be disposed off in the same manner. There is also an additional dimension in this issue viz. The inconvenience caused to the witness. Suitable decision must be taken in the matter taking the above factors into consideration.

38. Once the case of the Disciplinary Authority is over, the IO should ask the C O state his defence. This is a mandatory provision. Reasonable time may be given to the C O to file his statement in this regard. Copy of the defence taken by the C O should be made available to the P O.
39. On conclusion of the recording of evidence, the I O is expected to ask the C O the mandatory question regarding the circumstances appearing against him. The purpose of this provision is to focus the attention C O on the points which are required to be tackled by him. This provision should not be used to grill the C O to make self-incriminating statements. As a matter of fact, there is no need to insist on replies for the mandatory questions. It is sufficient if the I O raises the necessary questions and apprise the C O that “these are the questions which are required to be answered by you” or “Perhaps the final outcome of this proceedings will, to a great extent, depend upon the answers to these questions”. The fact that these questions were asked and the C O was required to prepare his defence in respect of these points should be recorded in the Daily Order Sheet.

40. After asking the mandatory questions, it is desirable that the I O checks up with the C O as to whether he got sufficient opportunity for his defence. If the inquiry was conducted in a fair manner, reply from a reasonable C O should be in the affirmative. If however the reply is in the negative, C O may be asked to substantiate his point. If the C O had any genuine grievance, the defect in the inquiry may be rectified. Alternatively, it may be explained to the C O that the reasonable opportunity was given to him. It is also desirable to inform the details of the circumstances when the C O requests were considered sympathetically and accommodated. The proceedings in this regard must invariably recorded in the Daily Order Sheet.

41. After the examination of witnesses is over, the parties are required to argue the case for convincing the I O as to why the charge must be held as proved or otherwise. This is done by:

♦ Connecting various pieces of evidence to draw the necessary conclusion
♦ Submitting reasons as to why the witnesses led by him are to be believed and the witnesses presented by the opposite side must be rejected.

42. The parties may orally argue their case or may file written submissions. At the end of the regular hearing, the I O should direct the parties to make arguments or make written submissions. Generally, they prefer to make written submissions. I O should direct the P O to file two his written brief within a reasonable time. C O is given time to file his written submission after perusal of the P O’s written brief. I O may either receive the written brief of the P O and forward it to C O or may direct the P O to serve a copy of his brief to the C O and file another copy along with the acknowledgement of the C O. In the later event, the I O should satisfy himself that the P O’s brief has been delivered to the C O.

**Post Hearing Stage**

43. The only action of the I O during this stage is the preparation and submission of his report to the Disciplinary Authority. Analysis of Evidence, and the Preparation of I O’s report are dealt with separately.
ROLE AND FUNCTIONS OF THE PRESENTING OFFICER

1. Presenting Officer is appointed for the purpose of presenting the case of the Disciplinary Authority so that the charges can be proved in the Inquiry. In many ways, the role of the presenting Officer is a challenging one. His role is comparable to that of the anchor runner in a relay race. Many people have carried the baton and finally it has been handed over to him. What ever 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 persons and accomplish the target. Similarly, a bad Presenting officer may lose the advantage acquired by the Investigating officer, Vigilance Officer, etc. and may lose the case through bad presentation.

2. For achieving his objective, the Presenting Officer is required to perform several functions. Basically, the Presenting Officer is required to lead the evidence of the Disciplinary Authority and satisfactorily answer the contentions raised by the Charged Officer. Thus, the explicit functions of the Presenting Officer are:

   (a) Presenting the documentary evidence
   (b) Leading the oral evidence on behalf of the disciplinary authority
   (c) Cross examining the defence witness
   (d) Preparation and presentation of the written brief

3. Successful accomplishment of these explicit functions, call for a number of implicit functions as well. Some of the actions such as liaison with the Disciplinary Authority has to be performed by the Presenting Officer throughout the course of his assignment. Notwithstanding this, various actions to be taken by the Presenting Officer in the course of his assignment can be conveniently categorised into the following four phases.:

   (a) Preparatory stage
   (b) Preliminary Hearing stage
   (c) Regular Hearing stage
   (d) Post hearing stage

PREPARATORY STAGE

4. The duties of the Presenting Officer commence long before the commencement of the proceedings by the Inquiry Officer. Preparation is the key to success. In fact the abbreviation of the Presenting Officer – PO – can be expanded as Preparing Officer. Although, the Presenting Officer carries out preparations for various specific actions in the entire course of his assignment, the preparations prior to the commencement of the hearing have a bearing on the success of the case. The preparations at this stage equip the Presenting Officer properly so that he can carry out the subsequent operations successfully. During this phase, the Presenting Officer has to perform a number of actions such as the following:
a) **Examine Appointment order and the documents received along with it:**

As per Rules, the Presenting Officer is required to be appointed by the Disciplinary Authority. Normally, the appointment order is required to be signed by the Disciplinary Authority himself. Where President is the Disciplinary Authority, the order of appointment of the Presenting Officer is required to be signed by an authority who is competent to authenticate orders on behalf of the President. Besides, the copies of the undermentioned documents are also sent to the PO along with the order of his appointment. In case of any discrepancy, the same has to be brought to the notice of the Disciplinary Authority for rectification at the earliest. Generally the copies of the following documents are required to be sent along with the appointment order:

i) Charge Sheet along with the enclosures.

ii) Written Statement of defence submitted by the Charged officer.

iii) In case the Charged Officer has not filed any Statement of Defence, a confirmation to the above effect and a confirmation to the effect that the Charge Sheet has been served on the Charged Officer.

iv) A copy of the order of Appointment in respect of the Inquiry Officer.

b) **Establishing rapport with the Inquiry Officer:** Presenting Officer is the agent of the Disciplinary Authority and his endeavour is to prove the charge. On the other hand, the Inquiry Officer is an impartial authority who is required to decide the case on the basis of the evidence led before him. Notwithstanding this position, the Presenting Officer should consider himself as one assisting the Inquiry Officer in ascertaining the truth. Often it is said that the relationship between the Disciplinary Authority and the Presenting Officer is similar to that between the client and advocate. Presenting Officer is compared to the Government Counsel. Every counsel is an officer of the court and owes a responsibility towards the court in helping the court to ascertain the truth. On the same analogy, the Presenting Officer should consider himself as an officer under the Inquiry Officer assisting the latter to ascertain the truth. Immediately on receipt of the appoint order, the Presenting Officer should get in touch with the Inquiry Officer and assure him of his co-operation. It is also desirable that the Presenting Officer informs the Inquiry Officer of his address and phone number to facilitate easy communication.

c) **Understanding the charge** – The Presenting Officer can present the case effectively only if he understands the case of the Disciplinary Authority thoroughly. The first step in this regard calls for the understanding of the charge. Often the charge is that a person has done something which should not have been done or has failed to do something which should have been done. That someone has used abusive language, (which should not have been done) is a charge. That a person has failed to keep the cash book up-to-date, (failed to do something, which should have been done) can be a charge. While charges like unauthorised absence, insubordination, etc can easily be understood, there may be situations wherein the omission or
commission of the Charged Officer may not be easily understandable. The clue for understanding the charge is asking the following questions:

i) What has the Charged Officer done or failed to do?
ii) What was required to be done or not to have been done?
iii) Which rule or instruction prescribes what is required to be done or not to be done?

d) **Analysing the charge**: The charge is required to be proved on the basis of certain facts. The Presenting Officer should be able to identify the facts which are required for proving the charge. 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:

i) That there are some instructions relating to the manner of procurement of items.
ii) That the instructions require that the items can be procured only after the receipt of the demands from the sub-depots.
iii) That the officer purchased the specified items.
iv) That there was no demand from any sub-depot for these items.

e) **Link the facts to evidence**: 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.

f) **Anticipate possible line of defence**: At the preparatory, the Presenting Officer should also anticipate the line of defence, the Charged Officer will be taking.

g) **Visualise the transaction**: Once the Presenting Officer is clear about the charge and the facts which are required to be presented for proving the charge, he should try to visualise the case of the Disciplinary Authority by mentally re-constructing the various stages involved in the transaction. The information contained in the Charge Sheet should be used for this purpose. In case of any difficulty, the Preliminary Investigation Officer can be contacted for the purpose. If the information in the Annexures to the charge sheet do not lead to the charge in a logical manner, it is possible that there is a missing link. Identification of a missing link at the early stage will enable initiation of remedial action. Presenting Officer being new to the case enjoys a great advantage because he views the case entirely on the basis of the contents of the Charge Sheet. Hence he is most likely to find out the missing logical links in the case of the Disciplinary Authority.
5. The following example may be helpful in understanding the significance of some of the steps mentioned above. A person was charged with theft of some electrical instruments and the following documentary evidence and oral witnesses were cited for proving the charge:

   a) Statement of a peon to the effect that the items were not found in the room when he opened the room on such and such date

   b) Certain cash memos to the effect that the items were purchased from a store a week after the above date.

6. The case of the Disciplinary Authority as narrated in Annexure II of the Charge Sheet was that

   “the Charged Officer was responsible for the electrical items kept in the room. It was found missing when a peon opened the room. The Charged Officer was asked to explain the loss of items. He purchased the missing items and made up the loss. By his act of replacing the missing electrical items, the charged officer has admitted his responsibility for the loss.”

7. You will appreciate that the above evidence do not lead to the charge by any stretch of imagination. Firstly, the facts narrated in Annexure II of the Charge Sheet only lead to the loss of items and not theft. The facts required for establishing a theft case are as under:

   a) That there were some items.

   b) That the items were under the custody of a person.

   c) That the items were lost while under his custody or

   d) That the person was found removing the items or in possession of the item.

8. In the instant case, there is no evidence to the effect that the electrical items were in the custody of the charged officer. There is not even any evidence to the effect that the items were there. The cash memos cannot be linked to the charged Officer in the absence of any other evidence such as the signature of the Charged Officer, etc. or the statement of some one to the effect that the cash memos were handed over by him to the administration. Obviously, the administrative authorities who have prepared the charge sheet were fully convinced that the charged Officer was responsible for the missing items but have failed to bring any thing on record. Such mistakes do occur because the authorities who prepare the charge sheet know too much about the case and take certain things for granted. According to them, certain facts are too well known to be proved. The effort of the Presenting Officer to independently visualise the entire transaction in logical sequence will bring to light even small missing links in the case of the Disciplinary Authority. Effort may be made for including additional state evidence before it is too late.
Chapter 35

PRELIMINARY HEARING STAGE

1. Proceedings before the Inquiry Officer are generally divided into two stages, namely Preliminary Hearing and Regular Hearing. During Preliminary Hearing the following actions take place:

a) The Charged Officer is asked whether he has received the charge Sheet, understood its contents and whether he admits the charges.
b) Schedule is finalised for the inspection of the originals of the listed documents.
c) The Charged Officer is asked to submit the list of documents and witnesses required for the purpose of this defence.
d) Decision by the Inquiry Officer about the relevance of the documents and witnesses required by the Charged Officer.
e) Inspection of the Originals of the listed documents
f) Collection of the documents required by the Charged Officer and considered relevant by the Inquiry Officer.
g) Taking over of the listed documents by the Inquiry Officer

2. During this phase the Presenting Officer has to carry out the following functions:

a) Collection of original documents: Documents listed in Annexure III of the charge sheet are held by the Disciplinary Authority. The same will have to be obtained by the Presenting Officer and kept in safe custody till it is got inspected by the Charged Officer and finally presented to the Inquiry Officer. Depending upon the nature of the documents and convenience of the parties, these documents may be taken over by the Presenting Officer at an appropriate time. At any rate, the documents must be with the Presenting Officer before the inspection of the same by the Charged Officer. It is advisable for the Presenting Officer to critically examine the originals of the listed documents so that the disputes which the Charged Officer is likely to raise may be anticipated and proper remedial action can be planned.

b) Finalising the schedule for the Inspection of the listed documents: It is during the Preliminary Hearing, that a decision is taken for the Inspection of the Documents. As per Rule 14(II)(i), inspection of the documents is required to be done “within 5 days of the order or within such further time not exceeding five days as the Inquiring authority may allow”. The Presenting Officer will have to indicate to the Inquiry Officer, his preference for the venue, date and time of the inspection of the listed documents. Depending upon the mutual convenience of the parties, the Inquiry Officer will fix the schedule for the inspection of the listed documents.

c) Conducting the inspection of the listed documents: Normally the Inquiry Officer leaves the inspection of listed documents to the Presenting Officer and the Charged Officer. 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:

i) 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.

ii) Preferably give one document at a time. There may be a number of documents which will be inspected by the Charged Officer. Simultaneously handing over all the documents to the Charged Officer will have many disadvantages. It is appropriate to give the documents one after another. Once a document has been inspected, the same must be taken back and then another document may be handed over for inspection. As the Charged Officer has been supplied with the copies of the documents, he may not require to compare the contents of the originals. However, if the Charged Officer requires to simultaneously peruse two documents, the same may be allowed ensuring the safety of the documents.

iii) Keep the document equidistant between the Charged Officer and the Presenting Officer. This will enable the Presenting Officer to have physical control of the original document if the Charged officer tries to destroy.

iv) Never leave the documents in the custody of the Charged Officer. It is advisable that the Presenting Officer is present 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 the 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.

v) The Charged Officer and the Defence Assistant must be treated with utmost courtesy, when they visit the Presenting Officer for the inspection of the documents. In case there is any difference of opinion about the rights of the Charged Officer or the limitations which the Presenting Officer may impose, the matter may be referred to the Inquiry Officer rather than entering into an unpleasant debate.

d) Additional documents required by the Charged Officer: Charged Officer is entitled to ask for the documents which may be of help in his defence. In fact the Inquiry Officer, is required to ask for the details of the documents and witnesses required for the purpose of defence. Although it is for the Inquiry Officer to decide on the relevance of the documents and witnesses cited by the Charged Officer, Presenting Officer need not be a mute spectator at this stage. Being a party to the proceedings, he has a right to express his opinion. Besides, he also has a role to assist the Inquiry Officer by way of bringing to the notice of the later the rule position and the custodian of the document which has been cited by the Charged Officer.
e) **Collection of the documents cited by the Charged Officer:** Often, the Inquiry Officers request the Presenting Officer to collect the Documents required by the Charged Officer for the purpose of his defence. This practice is likely to vitiate the inquiry and must be strictly avoided. The documents required by the Charged Officer must reach the Inquiry Officer direct from the custodian of the documents. Collection of the documents by the Presenting Officer may result in allegation being levelled by the Charge Officer that the documents were tampered while under the custody of the Presenting Officer. If the Inquiry Officer requests the Presenting Officer to collect these documents, the latter should politely apprise the former of the problems involved. However there can be no objection to the Presenting Officer transiting these documents in sealed covers from the custodian of the documents to the Inquiry Officer.

f) **Handing over the listed documents to the Inquiry Officer after the inspection:** After the Inspection of the documents by the Charged Officer, in the next hearing, the Presenting Officer is required to hand over the listed documents to the Inquiry Officer, who will be taking over the documents and marking them as SE-1, SE-2, etc. At this stage, the Presenting Officer should pay special attention to these aspects:

i) The facts regarding the admission and dispute over the listed documents should be correctly brought out in the Daily Order Sheet.

ii) The documents taken over by the Inquiry Officer are to be signed by the Presenting Officer and the Charged Officer.

iii) 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.

g) **Obtaining the copies of the documents required 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 Inquiry Officer and will not be under the custody of the Charged Officer. Hence, the Presenting Officer will have to request the Inquiry Officer for the copies of these documents and the perusal of the originals.

2. During the Preliminary Hearing, the major responsibility of the Presenting Officer is with reference to the documents. Firstly, he has to ensure the safety of the listed documents till they are handed over to the Inquiry Officer. Secondly, he 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.
Chapter 36

REGULAR HEARING

1. During Regular Hearing, the witnesses of both the parties are examined. During this phase of the Inquiry, the Presenting Officer is responsible for two things viz. leading the witnesses of the Disciplinary Authority and cross examining the witnesses presented by the charged Officer. These tasks are specialised in nature and call for considerable of importance. Further, these tasks involve several sub tasks as well.

2. Leading Oral evidence on behalf of the Disciplinary Authority calls for the following distinct activities:
   
a) Contacting and briefing the witnesses
b) Arranging the attendance of the witnesses
c) Conducting the examination of the witness
d) Conducting re-examination of the witnesses where necessary

3. Similarly, the task of cross examining the defence witnesses involves the following activities:
   
(a) Gathering the background information about the defence witnesses.
(b) Anticipating the deposition of the defence witnesses.
(c) Observing the examination in chief of the defence witnesses so as to judge the veracity of the statements, involvement/interest of the witnesses and also to object to leading questions.
(d) Cross examining the defence witnesses
Chapter 37

EXAMINATION OF WITNESS

The parties to any civil or criminal or quasi-judicial proceedings try to substantiate their contentions by leading evidence. In disciplinary proceedings, the role of the Presenting officer is to prove the charge. In practice, proof is the establishment of facts in issue and facts are established by leading evidence. The distinction between proof and evidence is this: proof is the effect of evidence, while evidence is the medium of proof.

The evidence may be documentary or oral. While documentary evidence is static, oral evidence is dynamic in nature. Documents are there and are to be perused and understood. Although a document may be interpreted and understood differently by different people, the contents of the documents remain fixed. On the other hand, even the party who has called the witness can not accurately anticipate the deposition during oral evidence. The opposite party may be totally unaware of the facts, which will be narrated by a witness, and the facts, which will be proved and disproved by the deposition. It is in this context that the examination of oral witness acquires considerable significance in the conduct of the Inquiry proceedings. For leading oral evidence, the contesting parties would name witnesses. The witnesses so summoned during the proceedings are subjected to three distinct phases, of examination viz.

(a) Examination in chief – carried out by the party who has named the witness.

(b) Cross-examination – carried out by the party opposite to the one, which has named the witnesses.

(c) Re-examination – carried out by the party who has named the witness.

2. During Disciplinary proceedings, a Presenting Officer is required to carry out examination in chief and re-examination in respect of the State/Management witnesses. A Presenting Officer will be required to cross-examine the Defence witnesses. During examination in chief, the Presenting Officer should bring out from the State witnesses those facts, which will help in establishing the charge. The Charged Officer will try to bring out from the defence witnesses, the facts which are against the charge, through his examination in chief. The Presenting Officer should cross examine the defence witnesses tactfully and try to disprove what these witnesses are trying to establish. The art of examining the witnesses calls for a variety of skills on the part of the Presenting Officer. Some of the skills, which a good Presenting Officer is required to develop, are:

(a) Art of studying people so as to judge what type of person the witness is i.e. whether he is a totally dishonest person who is tendering evidence with the sole motive of helping a party for some personal benefit, or just tries to help a man in distress, or has simply come to inform the Inquiry Officer of what he knows about the case, etc.

(b) Sound logic of knowing what facts are required to be proved to establish the charge.
(c) Ability to present the required facts in good sequence.

(d) Art of winning people and eliciting even those informations, which the witness would not voluntarily disclose.

(e) Conversational skill

(f) Presence of mind to overcome any unforeseen situation

(g) Ability to change the style of examination depending upon the situation and the nature of the witness.

3. Every phase of examination of witness calls for distinct styles and skills. It is said that:

“The art of examination in chief is to put questions in such a way that you reveal to the witness what you want to know from him. The art of cross examination is to put questions to the witness in such a way that you conceal from him the real objectives behind your cross examination.”
Chapter 38

EXAMINATION IN CHIEF

PURPOSE:

The basic rule for evaluation of evidence is that ‘findings must be based on evidence; not on conjectures and surmises.’ Thus the Presenting Officer is required to bring on record all the information which will enable the Inquiry Officer to come to the conclusion that the Charged Officer is guilty. Other than the production of the documents, examination in chief is the process with which the Presenting Officer brings on record the facts necessary for establishing the case of the Disciplinary Authority.

PREPARATION

The witnesses who will be examined by the Presenting Officer at this stage of the Inquiry are state witnesses. Hence it can reasonably be expected that they will be of assistance to the case of the Disciplinary Authority. Thus the Presenting Officer may not have to do anything extra-ordinary for extracting the truth from the witnesses at this stage. However, a certain amount of preparation is required for examination in chief as well. The following points may be taken note of for the purpose of preparation for the examination in chief:

(a) ORDER OF THE WITNESS: When there are more than one witness on behalf of the Disciplinary Authority, the Presenting Officer has to take a conscious decision (in consultation with the representative of the Disciplinary Authority) as to which witness will be produced first and who will be presented second, etc. Normally, the facts to be proved in an inquiry will be based on a logical sequence. It would be appropriate to lead evidence in the sequence, which will reveal the case of the disciplinary Authority in a logical manner.

(b) DECIDE ON THE FIRST WITNESS: It will be advisable to present as the first witness, a person who can give an overall view to the Inquiry Officer about the entire scenario relating to the issue including the organisational set up, rules, procedures, practices, etc. About the first witness, a famous author once mentioned as under:

“ the first witness, like the first stroke of the brush on clear canvas makes the first traces on the mind comparatively free from any impression. The traces he makes will remain until effaced or hidden by the testimony of succeeding witnesses and only strong evidence will hide or efface them.”

(c) PURPOSE OF THE WITNESS: Every witness mentioned in Annexure III of the Charged Sheet has been included therein for a specific purpose. For establishing the charge, a number of facts are required to be proved. Eg. for establishing the theft of an equipment, the prosecution will have to prove that the equipment was in existence, the
accused was in charge of the custody of the equipment, the equipment disappeared while under the custody of the accused, etc. Every such fact is proved through a document or an oral evidence. It is the duty of the Presenting Officer to ascertain the purpose for which a witness has been included Annexure III. If necessary, the Officer who has carried out the Preliminary Investigation may be contacted for this purpose.

(e) DECIDING THE QUESTIONS: The information required for establishing the facts is to be gathered by asking necessary questions. A good Presenting Officer should prepare the questions, which will bring out the required information from the witnesses.

(f) CONTACTING THE WITNESS: Before the date of hearing, the Presenting Officer has to contact the witness and apprise him as to what is expected of the witnesses. While it might be unfair to instruct the witness to make statements suitable to the case of the Disciplinary Authority, there is nothing unfair about keeping the witnesses informed about the purpose for which he is required to attend the hearing. The witness may also be advised to be prepared to face the cross examination by the Charged Officer or the Defence Assistant. Besides, it would be appropriate to reassure the witnesses that although the Charged Officer may be cross examining the State witnesses, the same has to be conducted in accordance with certain norms and the Inquiry Officer and Presenting Officer will ensure that nothing untoward occurs.

(g) ANTICIPATE THE QUESTIONS DURING CROSS EXAMINATION: The state witnesses will be subjected to cross examination by the Charged Officer. Presenting Officer should anticipate the likely line of cross examination by the Charge Officer and advise the witness to be prepared with answers for such queries. Ideally, a good Presenting Officer may conduct a Mock Cross examination on his own witnesses, so that they will be prepared to face the cross examination by the Charged Officer. Besides, this anticipation may also help the Presenting Officer to be better equipped for carrying out the Re-examination more effectively.

(h) ENSURING THE ATTENDENCE OF WITNESS: It would be appropriate for the Presenting Officer to take steps to ensure that the witnesses attend the hearing as per plan. Postponement of hearing due to non arrival of state witnesses does not put the Presenting Officer in favourable light. Besides, it may also result in the examination of witnesses in a haphazard order, thereby weakening the case of the disciplinary authority.

(i) LIST OUT THE FACTS TO BE STATED BY EACH WITNESSES: Prepare in advance, a list of facts which are required to be stated by each witness. If need be cross check the list with the witness himself

CONDUCT OF EXAMINATION

Although the Presenting Officer will be conducting examination in chief only on the state witnesses who come to depose on behalf of the disciplinary authority, yet there are reasons for the Presenting Officer to handle the witnesses with care. As already stated, the purpose of examination in chief is to secure from the witnesses, full
and clear statements. For achieving this objective, good amount of care is necessary. Firstly, there may be witnesses who talk at length about the irrelevant matters and miss the relevant issues. Also, there may be over smart witnesses who will rush through their statements so fast that the vital depositions may be missed by the Inquiry Officer. For ensuring the effectiveness of the examination in chief, the Presenting Officer is required to pay attention to the under mentioned points:

a) Get the witness introduced to the Inquiry Officer: It would be appropriate to get the witness introduced to the Inquiry Officer before the actually commencement of depositions about the facts of the case. The introduction should normally include the name and designation of the witness and his connection with the case.

b) Encourage the witness if he is overawed by the situation: At times you may have some state witnesses who may be nervous in facing the Inquiry Officer, for a variety of reasons such as the rank of the Inquiry Officer, or the importance of the occasion, or may be due to his own involvement in the case. A good presenting officer should study the mental frame of the witness as and when he starts the examination in chief. If the witness is nervous, it would be appropriate to ask a few questions to enable the witness to warm up and then start the actual examination in chief. The rule is “Inspire the fearful and repress the bold”

c) Specific statement carry more weight than general statement: If the witness says that the charged officer was casual in attitude, it would be a general statement. On the other hand, if the witness states that the charged officer had written the amount wrongly in cheques on five occasions in a span of six months, such statements are bound to carry more weight. Whenever your witness makes a general statement, try to get it substantiated by him through specific instances. Of course this is possible only if the witness is ready with the details. Proper guidance will have to be given before the witness appears before the Inquiry Officer.

d) Ascertain the source of knowledge: A statement made on the basis of concrete facts will carry more weight than one based on the knowledge or opinion of the witness. For example, a question such as “Who is responsible for taking action in this regard?”, it would be appropriate, if the witness says “as per para so and so of the Manual of xxxxx, the responsibility for dealing with such cases rests with xxxx”. Answers such as “the general practice is that …. Etc.” may not be very convincing. Even if the witness misses to state the source of knowledge, the Presenting officer should ask question as to what is the authority in support of the answer given by the witness.

e) Never ask more than what is necessary: Unnecessary repetition of the facts which have already been stated will only result in irritating the Inquiry Officer. Besides, the witness is liable to be cross examined on every statement made during the examination in chief. Hence the examination in chief should be concluded after all the relevant facts have been narrated by the witness. It is advisable if the Presenting Officer keeps a list of the
points to be stated by the witness and keeps on tick marking the list as and when a point is stated by the witness.

f) Don’t ask a question without a specific purpose. Every question asked during the examination in chief should be aimed at a specific purpose.

g) Never let the witness blink: Do not ask a question unless there is a reasonable prospect of your witness answering the same. Every time the witness says “I don’t know” during the examination in chief it indicates bad preparation on the part of the Presenting Officer.

h) Don’t ask a leading question: You must remember that during examination in chief, leading questions are prohibited except under very special circumstances. Raising a leading questions and entering into a debate with the Charged Officer are avoidable embarrassments for any Presenting Officer.
Chapter 39

CROSS EXAMINATION

Presenting Officer is entitled to cross examine the defence witnesses. In fact this is his valuable right which must be fully utilised. Although all the three stages of the examination of the witness are important, cross examination is of utmost importance, because of a number of reasons such as the following:

(a) During Examination in chief and re-examination, the PO would be dealing with a witness who has been named in the Charge Sheet. Most probably, these witnesses would have been contacted during the stage of the preliminary investigation and some pre-recorded statements of these witnesses would be available with the PO. At any rate, nothing prevents the PO from contacting these witnesses before the actual hearing and establishing a rapport with them. On the other hand, during cross examination, the PO will be dealing with a witness named by the Charged Officer. It is very unlikely that the PO would have any rapport with such witnesses.

(b) The witness appearing on behalf of the Charged Officer is likely to have a predisposition in favour of the charged officer. He is not likely to make any statement which will be useful to the Presenting Officer.

(c) Defence Witness would be under the influence of the Charged Officer. Presenting Officer, who has been entrusted with the duty of establishing the charges against the Charged Officer, may find it difficult to handle such witnesses.

(d) The defence witnesses himself is likely to be a party to transaction which has resulted in the charge. In such an eventuality, he would be interested in the closure of the case and would be taking a strong interest in the case of the Charged Officer.

(e) The charged Officer himself can be a Defence witness. Other defence witnesses may also be interested in the outcome of the exoneration of the Charged Officer. Such witnesses may not be inclined to make any statement in favour of the case of the Disciplinary Authority.

Cross examination is a powerful weapon which has to be handled with a great amount of preparation and care. Often it is carried out as an empty formality without any specific purpose. Cross examination must be carried out towards a predetermined purpose and according to a definite plan. Asking of rambling questions in the hope that something will turn up should never be practiced.

PURPOSE:

With regard to the quality of the statements made in the courts of law, a famous author once remarked:

“The astonishing amount of perjury in Courts of law is a sad commentary on human veracity. In spite of the oath, more untruths are probably uttered in Courts than anywhere else. This deviation in veracity ranges from mere
exaggeration all the way to vicious perjury. Much of this untrue testimony grows directly out of human nature under usual stress and is not an accurate measure of truth-speaking in general. In order to shield a friend, or help one to win in what is thought to be a just cause, or because of sympathy for one in trouble, many members of the frail human family, are inclined to violate the truths in a Court of law as they will not do elsewhere.”

Although the overall purpose of Cross Examination is to discover the truth by exposing the falsehood, one cannot always assume that every one who appears as a witness for a party in a proceedings is a liar. It will be completely wrong to conclude that if two parties are stating two different things one of them is lying. Besides, a witness who appears for a Charged Officer may, at times, be stating the facts to suit the case of the Charged Officer without resorting to lies. For example, there was a case in which a clerk was charged with the allegation of assaulting a peon who went to the section of the Charged Officer for delivery of mail. Two members of the staff working in the section, where the incident occurred, appeared as witnesses for the Charged Officer and affirmed during the examination in chief that the Charged officer was on leave on the day of the incident. However, during the cross examination, the Presenting Officer asked a pointed question, as to whether the Charged Officer, irrespective of being on leave, was present in the office. Both the witnesses repeated “I have already said that the Charged Officer was on leave on the day of the incident.” Although the witnesses did not categorically state that the Charged Officer, despite being on leave, was present in the office, their omission to directly answer the question of the Presenting Officer clearly indicates that the Charged Officer was in fact present in the Office on the day of the incident. A witness who appears for the opposite party and stating something contrary to what a Presenting Officer (or a lawyer) endeavours to establish may be telling what he considers to be true. there are serves several purposes. A Presenting Officer must be aware of the various purposes which may be achieved through cross examination.

a) **Ascertain full truth**: Generally, even an unbiased witness states only what in his opinion is relevant to the case. He might not have elaborated what he considered irrelevant. What the witness considered irrelevant and omitted to state, may be of use to the opposite party. Cross examination is an excellent opportunity to ascertain the full version of the incident from the witness.

b) **Bring to the notice of the witness the likely inaccuracies in his statements**: If a witness states what he considers to be true, cross examination is an opportunity to bring to his notice that there may be errors of perception or judgement in his version.

c) **Check the veracity of the deposition**: At times, there may be witnesses who are interested in saving the charged officer and for the purpose, they may be making statements which are untrue. Cross examination is an opportunity to expose such witnesses because they come with a fabricated story and may not be able to logically answer unexpected questions for which they did not have prepared script.

d) **Shake the credibility of the witness**: The deposition of a witness is to be evaluated by the Inquiry Officer. If a witness is an interested party, or a person
of low moral values, or bad reputation, his statements may not carry any value. If a witness suffers from any of these infirmities, the opposite party may bring out the same to the notice of the Inquiry Officer through cross examination.

e) Bring out self-contradictions: Contradictions in the statements of a witness will generally help the opposite party. Cross examination will help in bringing out and highlighting contradictions in the statements of a witness.

f) Highlight the insufficiency of the evidence: A witness may state something categorically, but may not be competent to make the assertion. In a case, a witness for the Charged Officer asserted that the initials in three documents were of the same person. During Cross examination, the Presenting Officer inquired the basis for this statement. All that the witness could state was that by looking at the there initials he felt that they looked alike and therefore concluded that they must be of the same person.

g) Bring out contradictions among different witnesses: If different witnesses led by the charged officer, provide different versions of an incident, this may go in favour of the State/Management. Presenting officer must be prepared to bring out contradictions among the statements given by various defence witnesses.

PREPARATION

Preparation for the cross examination should start even before the witness in question is subjected to examination in chief. Careful reading of the written statement of Defence filed by the charged officer will indicate what evidence the charged officer will be leading. Besides, as and when a witness is named by the Charged Officer, the Presenting Officer should try to anticipate the purpose for which the witness is being involved in the case. The Charged Officer while giving the details of the defence witnesses to the Inquiry Officer, is required to indicate the relevance of each of the witnesses. This will give some clue to the Presenting Officer as to what each of the defence witnesses is going to depose in the case. Besides, it would also be advisable to collect some background information about the defence witnesses. In case any defence witness is unworthy of credit, the point may be brought to the notice of the Inquiry officer through cross examination.

The second phase of preparation for cross examination coincides with the examination in chief of the witness concerned. The first rule for preparation for Cross examination is “Have your eyes always on the witness”. Although, hardened criminals may be able to hide their emotions successfully, ordinarily, the demeanour of a witness while under going examination in chief will provide excellent clue about his frame of mind. It is also necessary to have the ears on the witness. It may be possible from the pace of narration, as to whether the witness is reciting from memory or is repeating a story which he has been asked to memorise. Such knowledge will be useful in handling the witness during the cross-examination.

Take notes of the depositions of the witness during the examination in chief by the opposite party. Note down the points on which cross-examination is required to be done.
CONDUCT OF CROSS EXAMINATION

The Presenting officer should pay attention to the following aspects while conducting cross-examination:

a) It is said that the first cardinal rule for cross-examination is “Have continuity and concentration of thought”. Often the Presenting Officer will have to commence cross-examination of the defence witness immediately after the examination in chief is over. Presence of mind is perhaps the most essential virtue for successful cross-examination.

b) Secondly, while conducting cross-examination, the Presenting Officer should cover all the points on which the witness was to be cross-examined. At times, some smart witnesses may furnish uncalled for and unnecessary details, which are of no use. While listening to the stories of the witness, the presenting officer should not miss the points on which the witness is requested to be cross-examined. He should not lose the focus on the relevant issues.

c) Another important rule for cross-examination is “Know what you need and stop when you get it”. This implies that the Presenting Officer should commence his cross examination with a specific purpose, rather than trying to fish out for any useful information which may come out if the witness is subjected to prolonged interrogation. Similarly, the cross-examination should be concluded after the purpose is achieved.

d) “Keep to the level of the witness” is an important rule to be followed during cross-examination. While conducting cross-examination, the Presenting Officer is required to talk in the language, which can be understood by the witness.

e) During examination in chief, the general rule is to allow the witness to settle down. It is generally said that during cross-examination, the most difficult question must be put to the witness before he settles down. The Presenting Officer should identify the area where the witness is weakest and frame a question, which is mostly likely to unnerve the witness. This question must be thrown before the witness gets accustomed to the change in the styles between the examination in chief and the cross-examination.

f) Some people have the tendency to quarrel with the witness. This should be avoided. Cross-examination is meant for eliciting the information from the witness and not for convincing him or scoring a point over him.

g) Similarly, the Presenting Officer is expected to maintain his poise while conducting Cross-examination. Neither he should he lose temper with the witness nor should he show disappointment over his inability to bring out from the witness what he intended to bring out. conclusion of the

h) Never allow the witness to realise your intention behind a question. This is required to be practiced even after obtaining answer from the witness.
During cross-examination, the Presenting Officer is required to keep his emotions down. Expression of joy on receiving a favourable reply will make the interested witness more cautious and the subsequent questions may be elicit the desired answer.

i) Do not ask prohibited types of questions. Although the scope of cross-examination is much wider as compared to examination in chief, yet there are some limitations for cross-examination. For example, leading questions are not permitted during examination in chief, but are permissible during cross-examination. Examination in chief must be confined to only relevant facts but there is no such restriction during cross examination. Yet the following types of questions should not be asked during cross examination:

i) Indecent or scandalous question.
ii) Questions without any basis
iii) Questions which are intended to annoy the witness
Chapter 40

RE-EXAMINATION

A famous advocate once remarked that the purpose of re-examination is to put ‘Humpty Dumpty together again’. You may recall the old nursery rhyme

“Humpty Dumpty sat on a wall,
Humpty Dumpty had a big fall,
All the King’s horses all the king’s men
 Couldn’t put Humpty Dumpty together again”

A witness has been called by a party and has been subjected to examination in chief during which he would have stated what was favourable to the case of the party who has named the witness. (Humpty Dumpty sat on a wall). There after, the witness is subjected to Cross examination during which the opposite party might have extracted some facts from the witness, which might be unfavourable to the party who has called the witness. (Humpty Dumpty had a big fall). Thereafter, the original party who has called the witness is given an opportunity to re-examine the witness. (Putting Humpty Dumpty together again).

Re-examination should not be used as an opportunity to reiterate the points, which were stated during the examination in-chief. The scope of re-examination is limited to the points on which the witness was cross-examined. In case, new points are raised during re-examination, with the permission of the court, then the opposite party will acquire a right of further cross-examination. Another important limitation with regard to re-examination is that during re-examination leading questions cannot be asked.

PURPOSE

The right to re-examination arises from the right to explain. A party brings witnesses for the purpose of bringing certain facts which are favourable to his case. During Cross-examination, the opposite party would have tilted the balance against the party who has brought the witness. The Basic purpose of re-examination is to restore the balance. More specifically, re-examination is used for clearing the confusions, which would have cropped up during the cross-examination. During cross examination, the opposite party might have asked whether the state witness was ever charge sheeted for lack of integrity and the innocent witnesses would have answered this question in the affirmative. The Inquiry Officer may carry the impression that the state witness is a person lacking in character and whatever statements he made during examination in chief must be taken with a pinch of salt. The Presenting Officer has the benefit of re-examining the witness during which the witness may be given an opportunity to clarify that although the witness was charged sheeted he was exonerated of the charges. This clarification will put the depositions of the witness in better light and will help the case of the Disciplinary Authority.

For effective re-examination of the witnesses, the Presenting Officer should keenly follow the Cross-examination and note down the instances wherein the witness has retracted his earlier versions or his credibility has been shaken. As he gets the
opportunity to re-examine the witness, the Presenting Officer should provide the witness with opportunity to clarify the points over which he had fumbled during cross-examination. For achieving this, efforts must be made to inspire the witness and raise his level of confidence by referring to those points wherein he had stood his grounds during the cross examination. Care must however be taken not to waste time on trivial discrepancies. Etc. If the witness has stated during and the examination in chief that about a dozen people were present when the incident occurred but could name only nine people at the time of cross examination, it would be a futile effort to make the witness state the remaining three names.

There is no need to re-examine all the witnesses. If a witness has stood his ground during cross-examination, there is no need re-examine him. Similarly, if a witness has been established to be corrupt and dishonest during cross-examination, it may not be advisable to make any attempt to rescue him through re-examination.
Chapter 41

INTRODUCTION OF A NEW EVIDENCE IN DEPARTMENTAL ENQUIRIES DISTINCTION BETWEEN INHERENT LACUNA AND GAP

CCS (CCA) Rules and other Discipline and Appeal Rules incorporate instructions relating to new evidence not being permitted to fill up any gap in evidence but it may be called for when there is an inherent lacuna or defect in the evidence which has been produced originally. However, there is not much difference between a lacuna and a gap as defined in the dictionary. The rationale behind this distinction seems to originate from Rule 27 of Order 41 of the Civil Procedure Code, according to which the parties to an appeal are not entitled to produce additional evidence before the Appellate Court unless the Lower Court had refused to admit such evidence which ought to have been admitted or the Appellate Court requires such evidence to be produced to enable it to pronounce judgement or for any other substantial cause. Explanatory notes below this rule clarify that additional evidence should not be taken until the Appellate Court had examined the evidence on record and after such examination has come to the conclusion that "the evidence as it stands" is inherently defective. In the case of Parsotim Vs. Lal Mohan, the Privy Council held that "the rule is not intended to allow a litigant who has been unsuccessful in lower court to patch up the weak points in his case and fill up the omissions in the Court of Appeal.

2. The Ministry of Law have expressed the following opinion on this point:-

"Inherent lacuna or defect in evidence means evidence which is required to enable the authority to pronounce judgement or for any other substantial cause. Secondly, that either party to the enquiry inspite their best efforts, could not produce evidence at the time of inquiry or that the evidence was discovered after the close of the inquiry; under the above circumstances only, new evidence can be introduced.

As far as the word 'gap' is concerned, it means that the evidence was available at the time of the inquiry, but however, due to reasons which may be negligence or otherwise could not be produced at the time of inquiry."

3. From the foregoing it is clear that the concept of removal of inherent lacuna is applicable before an Appellate court and not during the original proceedings. However, under the CCS (CCA) Rules, an Inquiry Officer is called upon to decide whether the new evidence proposed to be introduced by the Presenting Officer before the closure of his case is in the nature of removing an inherent lacuna or filling up a gap. He is, therefore, called upon to decide the matter when the total evidence is not before him. To that extent, the Inquiry Officer is handicapped in taking a decision, The author has, therefore, devised a simple test, namely, that the Inquiry Officer should ask himself a question:-

'Whether he (the Inquiry Officer) can decide the case either way without taking into consideration the new evidence?"
If the answer is `YES' the new evidence proposed to be produced would be in the nature of filling up a gap. However, if the Inquiry Officer finds that he would not be able to decide the case without taking into consideration the new evidence, in that event, this will be in the nature of removing an inherent lacuna.

4. The view is that the note below Subrule (15) of Rule 14 has created more difficulties than helped in clarifying the matter. If the note is removed, in that event, the Inquiry Officer will have the discretion to allow or not to allow new evidence to be produced both on behalf of the Presenting Officer and the Charged Officer. The Inquiry Officers' use of discretion can be challenged in appeal before the Appellate Authority by the aggrieved party.
Chapter 42

WRITTEN BRIEF OF THE PRESENTING OFFICER

INTRODUCTION

1. 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. To enable the Inquiry Officer to draw inference, the parties are given two options viz. present arguments or submit written briefs in support of their case. It must be appreciated that the submission of the written briefs is an alternative to the argument of the case. 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 Inquiry Officer 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 Inquiry Officer.

   (b) Arguing a case is a more difficult task than leisurely writing a brief. Argument calls for certain additional skill ie. Presentation skills, verbal fluency, 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.

2. The advantages of the submission of the written brief should be fully availed by the Presenting Officer. It is desirable for the Presenting Officer to file written submissions rather than choosing to argue the case. If felt necessary, the written brief may be shown to the Preliminary Investigation Officer or the Vigilance Officer subject to their willingness/availability and the importance of the case.

3. 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.

(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.

**FORM**

4. As mentioned earlier, no form has been prescribed for the brief of the Presenting Officer. It is recommended that the following form may be adopted:

(a) **Introduction:** It is desirable that the brief starts with an introduction wherein the details of the case may be given. The introduction may run something like this:

   “Charges were framed by xxxxx (Disciplinary Authority) against Shri. ABC (name and designation), under Rule 14 of the CCS (CCA) Rules 1965 vide OM NO. xxxxx dated xxxxx. On the denial of the charges by Shri ABC, it was considered necessary by the Disciplinary Authority to hold an inquiry into the matter and accordingly Shri. Mmmmmm (name and designation) was appointed as the Inquiry Officer and the undersigned viz. mmmmmm (name and designation) was appointed as the Presenting Officer. Inquiry was held during xxxxx (date of commencement of the inquiry) and yyyyyyy (date conclusion of the inquiry). The Inquiry Officer ordered on yyyy that the written brief of the Presenting Officer be submitted by zzzzzz (date) and accordingly this written brief is being submitted.”

(b) **Charge:** The second item in the Written brief must be the details of the charges. The para may read

   “The articles of charge framed against Shri. ABC are: mmmmmm,mmm”

(c) **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 also be indicated here.

(d) **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
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Officer for presenting additional documents/witnesses. Besides, permission granted to the Charged Officer for engagement of Defence Assistant, any lenience shown to the Charged Officer, any facility availed by him, etc. may be specifically brought out here. It is desirable that the Presenting Officer anticipates the arguments likely to be taken by the Charged Officer and provide answers to the same, to the extent possible. If any document which was totally irrelevant was requested by the Charged Officer and the same was denied by the Inquiry Officer, one can be more than sure that the Charged Officer will be mentioning the same in his written brief and trying to argue that he was denied reasonable opportunities. The Presenting Officer should anticipate such argument and highlight in his brief that the Charged Officer was provided with reasonable opportunity.

(e) 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.

(f) 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 charged sheet or presenting additional witnesses with the permission of the Inquiry may also be indicated.

(g) Evidence on behalf of the Charged Officer: The details of the oral and documentary evidence presented by the Charged Officer may be listed here.

(h) 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 state evidence. There are two ways of achieving this, viz.

i) 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.

ii) 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.

(i) Analysis of the case of the Charged Officer: This is another 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 case 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:

i) that the case of the Charged Officer is not logically possible.

ii) that the Charged Officer has failed to establish what he tried to do.

iii) that the witnesses led by the Charged officer are not reliable because of contradictions with the established facts.

iv) That the defence witnesses were interested parties and hence their evidence cannot be relied upon.

v) Inconsistency and absence of corroboration in the statements of the Defence Witnesses.

(j) **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.

**FACTS**

5. Cases are required to be proved on the basis of facts. Hence facts constitute an essential ingredient of the brief of the Presenting Officer. Before the commencement of the hearing, the Presenting Officer should identify the facts necessary for establishing the charge. He should also identify the evidence through which these facts will be established. In the written brief, the Presenting Officer should indicate the facts proved by the evidence of the disciplinary Authority.

**LOGIC**

6. What fact is required to be proved depends upon the circumstances of the case. That crow is black is fact. This fact may not appear to prove anything. This fact may be used for establishing that a person has defect in vision. If a person a describes a crow as a blue coloured bird, our logic informs us that the
person should have some defect in his vision. The Presenting Officer should have a sound logic for drawing conclusions from the fact is presented in a case. Consider the following facts of a disciplinary case:

a) A person was charge sheeted for having preferred a false LTC claim. In those years LTC was permissible even for travelling in private bus. The charge sheet was issued nearly three years after the journey, on the basis of a report received from the State Transport Authority.

b) The case of the Disciplinary Authority was that the Charged Officer had submitted an LTC claim of having visited Kanya Kumari along with family in a Super Deluxe private bus. But the State Transport Authority had intimated that the name of the person was not in the list of passengers available in their office.

c) In the inquiry, the Charged Officer produced a list wherein his name also figured. According to the Charged Officer, the original passenger list was for two pages and he had both the pages with him when he traveled three years ago. By the time the disciplinary authority wrote to the State Transport Authority, there years had passed from the date of journey and unfortunately the second page of the list was lost or torn off or detached from the file of the State Transport Authority.

d) An officer of the State Transport Authority was produced as a state witness. During cross examination, he admitted that the possibility of the second page getting detached from the file is not ruled out. Besides, he also stated that the initials on both the pages of the list shown by the Charged Officer and the initials on the single page of list held in the office of the State Transport Authority are of the same person.

7. On the basis of the above facts, one is most likely to conclude that there is some mix up of papers in the office of the State Transport Authority. One is likely to conclude that the charges are not proved. Yet, by the application of logic it was held in this case that the charges were proved and penalty was imposed on the Charged Officer. The logic was that if we take into account the number of passengers in both the pages, the total number works out to 75 and it was improbable that 75 passengers could be accommodated in a Super Deluxe bus for a journey from Delhi to Kanyakumari. Isolated facts cannot establish anything. Facts linked with logic alone can establish. At times logic may establish certain things which are not visible from the reading of plain facts. The Presenting Officer, in his written brief should be able to provide logical reasoning linking the fact and the conclusion which he wants the Inquiry Officer to arrive at.

LANGUAGE

8. The basic purpose of preparing the written brief is presenting the details and convincing the Inquiry Officer 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 calls for communication skill of a fairly high order. The brief is required to be read and understood by the Inquiry
Officer without any clarification from the Presenting Officer. (Obviously, the Inquiry Officer will be reading the brief at his convenience and the Presenting Officer is not expected to be present for offering any explanation).

9. Besides, verbal presentation has certain advantages such as body language, voice modulation, volume, etc. If the case is verbally argued, the Presenting Officer may be able to emphasise 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.

CONCLUSION

10. As already seen, the submission of brief is the last activity of the Presenting Officer. Charged Officer is entitled to prepare his brief on perusal of the brief of the Presenting Officer. Inquiry Officers follow two methods for obtaining the briefs from the parties:

a) The Inquiry Officer may direct the Presenting Officer to submit two copies of the brief so that he (Inquiry Officer) may forward a copy to the Charged Officer.

b) Alternatively, The Inquiry Officer 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 Inquiry Officer.

11. 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 Inquiry Officer along with the copy of the brief meant for the Inquiry Officer. In either case, the time limit prescribed by the Inquiry Officer 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, Inquiry Officer must be informed of the reason and extension obtained with the knowledge of the Charged Officer.
Chapter 43

APPRECIATION OF EVIDENCE

Introduction

1. In the gamut of the multifarious activities in disciplinary proceedings, there are two distinct phases which are more difficult than others. They are, firstly, arriving at a conclusion as to whether, or not the Charged Officer is guilty; secondly deciding the quantum of penalty. While the latter of the above two falls exclusively within the jurisdiction of the Disciplinary Authority, the former is the responsibility of the Inquiry Officer as well as the Disciplinary Authority. In arriving at the conclusion as to whether the Charged Officer is guilty or not, the Disciplinary Authority is aided by the report of the Inquiry Officer, which is not binding on him. The Disciplinary Authority, for reasons to be recorded, is at liberty to disagree with the findings of the Inquiry Officer. Although the rules do not specifically state so, the Disciplinary Authority is required to go through the entire records of the case, apply its mind and decide afresh as to whether the Charged Officer is guilty or not. Thus the Disciplinary Authority is required to re-appreciate evidence. The Appellate Authority may also be required to re-appreciate evidence depending upon the contents of the appeal. Thus, appreciation of evidence is a process in which various functionaries in the disciplinary proceedings are intimately involved. This process involves the examination of the various documents forming part of the records of the proceedings and statements made by the witnesses in the course of the proceedings and arriving at a conclusion as to whether, the Charged Officer is guilty.

2. Decision making is a part of the assignment of most of the middle and high level officials. However, the process of drawing conclusion from the records of disciplinary proceedings is complex and cannot be considered identical to the administrative decision making. Following are the distinguishing features of the decision making process in a quasi-judicial proceedings as compared to that in a purely administrative case:

   a) In a case of purely administrative nature, the facts are generally presented by persons who do not have any interest in the final outcome of the case. Hence, by and large, the facts are objective. At any rate, there is not much scope for biased views or consciously concocted versions. On the contrary, the parties to a disciplinary proceedings are keen about the final out come and are expected to establish facts to suit their case.

   b) Conclusions in the disciplinary proceedings are required to be based entirely on evidence. There is no such compulsion in administrative decision making. In administrative decision making, the authority can depend upon his vision, imagination, etc.
c) Decision making authority in a disciplinary case is prohibited from relying upon his personal knowledge. On the contrary, an authority importing his knowledge for decision making in a purely administrative case is considered to add value to the decision making process.

d) In a disciplinary case, information collected behind the back of the Charged Officer cannot be relied upon. There is no such constraint in administrative decision making.

e) Disciplinary proceedings are covered by statutory provisions. Hence the decision making process is as important as the decision itself. Although the provisions of the Indian Evidence Act 1872, are not applicable for the disciplinary proceedings, the general principles of the Act are applicable. Due attention must therefore be paid to issues such as onus of proof, standard of proof, etc.

f) Disciplinary Proceedings are quasi-judicial in nature. The rule of *Audi alteram partem* (Hear the other side), which is the first Principles of Natural Justice apply to the disciplinary proceedings. Although, the Principles of Natural Justice apply to the purely administrative actions also, the possibility of hearing the party is ruled out in most of the decision making, and hence the *audi alteram partem* rule is not applicable. The applicability of this rule brings along with it several constraints in the conduct of the proceedings as well as in drawing conclusions.

**Types of evidence**

3. In disciplinary proceedings, two kinds of evidence are produced viz. documentary and oral. Documentary evidence is presented by the parties and is taken on record after inspection by the opposite party. The documents are required to be read and understood. Oral evidence is tendered in person before the Inquiry Officer and the witness can be asked to clarify his statements. This facility is not available with the documents. Besides, a witness is subjected to cross examination by the opposite party and he may make contradictory statements during different stages of his depositions. On the other hand, a document does not change its contents. It is static. Accordingly, different procedures are to be followed and different techniques are to be adopted for evaluating each of these two types of evidence.

**THE SCENARIO**

4. Life would have been much easier, if all the parties involved in the Disciplinary Proceedings speak truth, the whole truth and nothing but the truth. However, the hard reality is that we generally come across conflicting versions from the contesting parties to the proceedings. The conflict is not confined only to the interpretation of the orders, instructions, rules etc. It extends even to the factual aspects of the case. Very often, the versions of the parties are at variance even
in the basic facts of the case. The variance is so marked that the versions cannot be simultaneously true. Obviously, only a part of the voluminous facts produced in the Inquiry can be true. It is in this context that the Inquiry Officer, Disciplinary Authority, etc. are charged with the onerous task of ascertaining the truth out of the available information. As stated by a famous judge, this process is, to a large extent, ‘personal, individual and depends upon an infinite variety of circumstances; any attempt to regulate or control it by a fixed rule is impracticable, worse than useless, inconsistent and repugnant to a nature of trial.’ Notwithstanding the difficulties involved, there are certain guidelines for appreciation of evidence produced in the proceedings and arriving at the truth. Before seeing these guidelines, let us have a look at the scenario so that we can appreciate the motive of the parties and their game plans.

5. The CHARGE is based on some facts. Assume for a while that a charge has been leveled against an official that he has disobeyed orders issued by the superior authority. This charge is based on the following facts:

a) That an order was issued whereby the Charged Officer was required to perform some act; and

b) That the above order was issued by a superior officer who had the authority to issue such orders; and

c) That the Charged Officer was informed of the orders; and

d) That the Charged Officer did not carry out the orders, or

e) That the Charged Officer refused to carry out the order, or

f) That the Charged Officer did something contrary to the order.

6. Establishment of these facts is the pre-requisite for proving the charge. The Presenting Officer is required to establish the facts at (a) to (c) above and any one of the facts among the rest i.e. (d) to (f). If any one of these four facts is not proved, it may not be possible to hold that the charge has been proved. Presenting Officer will lead evidence for establishing these facts. For establishing the charge, the Presenting officer may lead the following evidence:

a) A copy of the order which prescribes that the Charged Officer will perform an act.

b) The point at para 4(b) above viz. that the signatory is the superior officer of the Charged Officer, may not be questioned by the Charged Officer. However, if the same is disputed by the Charged Officer, some evidence to this effect such as organisational chart or some Office Order which
empowers the above officer to assign work to the Charged Officer may have to be provided.

c) Acknowledgement to the effect that the Charged Officer was made aware of the contents of the order referred to at (a) above. Alternatively, this may be established through collateral evidence such as a representation from the Charged Officer referring to the above instruction.

d) Suppose that the competent authority had issued orders to the effect that the Charged Officer (as well as other officials) will review the files in the section and submit, by a prescribed date, the list of files to be shifted to the Record Room. The fact that the Charged Officer had failed to carry out the orders may be established through any of the following means:

(i) A report of the immediate controlling officer of the Charged Officer wherein he would have mentioned the progress achieved in the weeding out drive and indicated the nil contribution of the Charged Officer.

(ii) A report of the physical inspection carried out after the prescribed date, which may indicate that a large number of files which should have been sent to the Record Room were found in the custody of the Charged Officer.

(iii) The records relating to the receipt of files in the Record Room which will indicate that the Charged Officer had not deposited any file in the Record Room by the prescribed date.

e) The refusal of the Charged Officer to carry out the orders of the competent authority may be written or oral. In case the Charged Officer had communicated in writing, his unwillingness to do the task, the communication itself will be a piece of documentary evidence to establish the fact at para 4(e) above. In such a case one may not have to wait for the due date for the completion of the task. As soon as the Charged Officer communicates in writing, his disobedience of the order, disciplinary action may be initiated against him. If the Charged Officer had orally communicated his disobedience for the instruction, then some one to whom the disobedience was communicated may be produced as a witness in the case.

7. Against the above attempt of the Presenting Officer, the defence of the Charged Officer may take any of the following forms:

(a) Questioning the maintainability of the proceedings – the Charged Officer may question the power of the Disciplinary Authority to issue the Charge Sheet and conducting the proceedings. Although this form of defence is rarely adopted by the Charged Officers, the possibility of a Charge Officer...
taking this line of defence is not ruled out. This contention of the Charged Officer is not required to be answered in the Inquiry proceedings. Hence this aspect is not covered in the present handout.

(b) That the prosecution has failed to establish the charge – A Charged Officer may win the proceedings even by keeping quiet. For, it is for the prosecution to establish the charge. Even during the ex-parte proceedings, a Charged Officer may be exonerated, if the Presenting Officer fails to produce sufficient evidence. Obviously, in a case wherein the Charged Officer participates, he may contend that the Presenting Officer has failed to establish the charges. This may be done in the following ways:

(i) That the evidence led by the Presenting Officer is not reliable/acceptable. For example, the Charged Officer may contend that the instructions were not circulated to him at all. Such contentions may be raised in the written brief of the Charged Officer. If the evidence led on behalf of the Disciplinary Authority does not contain any proof to the effect that the instructions in question were communicated to the Charged Officer, this contention of the Charged officer will have to be accorded serious consideration.

(ii) That the evidence does not establish the facts, which the Presenting Officer wants to establish. For example, the Charged Officer may contend that the documentary evidence produced by the Presenting Officer for establishing that the Charged officer has refused to carry out the task assigned to him does not amount to a refusal. He may contend that in his communication, he had only presented the difficulties anticipated by him in performing the task and he was duty bound to submit his views to his superior officer. Such a contention will also be raised in the written brief of the Charged Officer. This line of defence will be mostly relied upon by the Charged Officer in cases involving oral evidence. During cross-examination of the State Witnesses, the Charged Officer may try to elicit contradictory statements from the witness. Then he may contend in the written brief that the witness in question is not reliable.

(iii) The Charged Officer may present a defence on his behalf. For example, in case of misbehaviour in the office, the Charged Officer may produce evidence to the effect that he was not present in the scene at all.

8. Normally in the Inquiry proceedings, the Charged Officer may adopt a combination of the methods mentioned in para (b) above. As a result of the endeavour of the parties, at the end of the Inquiry, there will be enough conflicting and contradictory evidence calling for evaluation. The evidence adduced during the Inquiry may generally fall in the following three categories:
(a) Wholly reliable
(b) Wholly unreliable
(c) Partly reliable and partly unreliable

9. Obviously, the process of ascertaining whether a piece of evidence is reliable or unreliable or a combination of the two is a painful one. As mentioned by a famous Vice Chancellor over a hundred years ago

“Belief is rarely the consequence of a strictly logical process. It is either partially or entirely the outgrowth of education, bias, affection, fear, or some other influencing passion. We believe what we wish to believe, and that we are in a mood for accepting as true. The same evidence which to one may be convincing to another may seem absurd.”

10. It is in this context the Inquiry Officer, the Disciplinary Authority, etc. are required to make up their mind as to which of the statements made by different witnesses are reliable and which are not reliable.

GENERAL PRINCIPLES

11. Regard must be paid to the following general principles for the purpose of evaluation of evidence.

(a) Provisions of the Indian Evidence Act are not applicable but the general Principles are applicable: Indian Evidence Act 1872 is a comprehensive statute, which lays down various rules on the subject. When a fact is said to be proved, what is a relevant fact, what are admissible evidence, what kind of questions can be asked during the examination of witnesses, etc. are some of the multifarious factors covered in the above Act. The provisions of the act, as such are not applicable for the departmental inquiries. However, the general principles such as the order in which the witnesses are examined, disallowing leading questions during examination in chief, putting the burden of proof on a party who avers to a fact, etc are some of the general principles which are followed during departmental proceedings.

(b) Evidence is to be weighed and not counted. A fact is not to be held as acceptable simply because it has been stated by more witnesses. A case may be decided on the basis of the statement of a single witness, provided he is reliable. In this connection, it is noticeable that Sec 134 of the Indian Evidence Act 1872, specifically states that

Number of witnesses- No particular number of witnesses shall in any case be required for the proof of any fact.
(c) **Findings must be based on evidence, not conjectures and surmises:** While the testimony of a witness is itself, insufficient to establish or justify an inference of a particular fact, it would be a gross irregularity to take the decisions based on suspicion. As stated by a judge, “The sea of suspicion has no shore and the court that embarks upon it is without rudder and compass.”

(d) **Status of the witness is immaterial for assessing credibility:** No doubt that the statements made by the various witnesses in an Inquiry Proceedings are to be evaluated with the result that the evidence of some may be rejected in whole or in part and that of some others may be accepted. But the acceptability or otherwise of a witness does not depend upon the official status of the witness because truth has no connection with status.

(e) **No evidence behind the back of the Charged Officer:** The case is required to be decided on the basis of the evidence produced during the proceedings. Material collected behind the back of the Charged officer cannot be used against him. Besides, the personal knowledge of the decision making officer should not be imported for deciding the case.

(f) **Burden of proof lies with the Disciplinary Authority:** The general rule is that the burden of proof in a proceedings lies on the party who would fail if no evidence at all were given on either side. Thus burden of proof in the Inquiry Proceedings lies with the Disciplinary Authority. However, the burden of proof as to any particular a fact lies on that person who wishes the court to believe in its existence. Thus, if in the proceedings, the Charged Officer wants the Inquiry Officer to believe that on a particular day he was not present in the office, it is for the Charged Officer to provide evidence to this effect and prove the same.

12. The recording of evidence and its evaluation is not the unique feature of Inquiry Proceedings. Evidence is recorded and analysed by Courts also. In fact a greater volume of evidence is recorded in the courts. However, there are some distinguishing features of the evaluation of evidence in Inquiry Proceedings. The same are as under:

(a) **Standard of proof:** The standard of proof required in a criminal trial is “proof beyond reasonable doubt”. In the domestic inquiry proof beyond reasonable doubt is not required It is sufficient to establish the charges on the basis of the principles of preponderance of probability.

(b) **Hearsay evidence:** A witness is required to state what has been seen or heard by him. If a witness narrates what he has gathered from others, such a witness is known as hearsay witness. Normally hearsay evidence is not admitted in judicial proceedings. However the Supreme Court has held that in Inquiry Proceedings, even hearsay evidence is permissible.
(c) **Circumstantial evidence**: Circumstantial evidence is permissible even in judicial proceedings. However the same is subject to certain conditions. In Inquiry proceedings, a more liberal approach is permissible towards circumstantial evidence.

**DOCUMENTARY EVIDENCE**

13. Documents on the basis of which the charge is proposed to be established are listed in Annexure III of the Charge Sheet. These are known as *listed documents*. Copies of these documents are normally given to the Charged Officer along with the Charge Sheet. The Charged Officer is given an opportunity to inspect the originals of these documents. In most of the departments, the copies of the listed documents are generally provided along with the Charge Sheet. Copies of ledgers etc. would not have been supplied to the Charged Officer. Thus, during inspection of documents, the Charged Officer may not have to ascertain the contents of the documents, except in respect of those documents, copies of which were not supplied to him. Hence during the inspection, the charge officer may take notes of the contents of documents whose copies were not supplied to him. In addition to this he can also satisfy himself about the conformity of originals with the copies supplied him. He can also examine whether the same has been tampered with. After the inspection of the documents, the Inquiry Officer takes the same on record. At this stage, the Charged Officer is required to state whether he admits or disputes the documents. The Inquiry Officer does not take disputed documents on record. They are required to be introduced through oral evidence. Admission of a document does not mean that the Charged officer is in agreement with the contents of the documents. For example, in a disciplinary proceedings relating to lack of devotion to duty, one of the listed documents may be a memo served on the Charged Officer highlighting his shortcomings in work. When the Charged Officer admits this document, he only admits that such a memo was in fact served on him. He may still argue that the contents of the memo are incorrect. Of course, he will have to lead evidence in support of this contention.

14. Besides, the Charged Officer is given an opportunity to give the list of documents, which are required for the purpose of his defence. The Inquiry Officer is required to examine the relevance of these documents and procure such documents, which in his opinion are relevant for the purpose of defence. Such documents are known as *additional documents*. The Presenting Officer is at liberty to inspect these documents and obtain the copies of the same. Obviously, the Presenting officer is also at liberty to contest the content of the documents produced on behalf of the Charged Officer. The contentions of the contesting parties about the contents of the documents produced by of evidence will be contained in their written briefs. It is for the Inquiry Officer to interpret the document and determine as to whether the same establishes the facts, which the parties desire to establish. Interpretation of a document means two things: firstly, the meaning of the words and secondly the legal effect which is to be given to them.
15. As the documentary evidence is also not beyond dispute, considerable effort is required on the part of the Inquiry Officer and the Disciplinary Authority in evaluating them. The following guidelines may be of help in evaluating the documentary evidence:

(a) It is a general principle of evaluation of evidence that documentary evidence carries more weight than oral evidence. This is because of the fact that the contents of the documents are fixed and they do not change their colour to suit the occasion. However, before relying on the document, its authenticity must be ensured.

(b) Even if the opposite party does not dispute the authenticity of a document, the authority evaluating evidence must satisfy itself about the same.

(c) Written brief of the contesting parties may contain their interpretations of the content of the documents and the same must be taken into account while evaluating the document. While it may not be possible for the authority to agree with the interpretation given by a party, the same must be gone through and the rival contentions evaluated before the Inquiry Officer ascribes a meaning to the content of a document.

16. There are some well recognised rules for the interpretation of documents for ascertaining the true meaning of the words used and to give effect to the true intention of the author of the same. They are:

(a) The presumption is that ordinary words are used to convey their ordinary meaning. Hence, documents, which are plain and unambiguous, must be interpreted according to their plain and unambiguous language.

(b) Every document must be construed as a whole without isolating the words and passages from their context. An attempt must be made to reconcile apparent inconsistencies and avoid an interpretation, which will render the document meaningless.

(c) Where the words of the document is clear, there is no need to gather the intention of the author from any extraneous source. Where, however, there is a dispute about the meaning of a word, the subsequent conduct of the parties can throw light on the meaning of the word.

(d) It would be wrong to given different meanings to the same expression in different parts of a document unless it is evident from the context that a different meaning should be put upon it.
(e) An authority, which is interpreting a document, cannot read words into a document, which can provide a rational meaning, even without such import of words.

APPRECIATION OF ORAL EVIDENCE

17. Neither the Indian Evidence nor any other Act lays down any provision regarding which witness is to be believed and which one should not be believed. While the above Act contains several provisions indicating what are the types of evidence which are admissible, it is silent as to which evidence is to be believed. It is an admitted fact that ‘the weight of evidence cannot be regulated by precise rules as the admissibility may be; it depends upon rules of commonsense and the weight of the aggregate of many such pieces taken together is very much greater than the sum of the weight of each such piece of evidence taken separately’. In fact the Draft Indian Evidence Bill contained a provision “Whenever any evidence is said to be admissible, it does not mean that it is to be regarded as conclusive, but only that the weight, if any, which the deciding authority may consider due, shall be allowed to it.” (Emphasis supplied). Although this provision does not figure in the Indian Evidence Act as it stands now, the principle is worth remembering. Thus, it has been left to the deciding authority to decide as to whether a witness should be believed or not. The following are some of the questions which often arise in the minds of the Inquiry Officers while evaluating evidence:

(a) What weight is to be given for the statement of a witness?
(b) Whether it must be believed in full or in part?
(c) If it is to be believed in part, which part is to be believed?
(d) Whether it must be rejected in toto?
(e) What is the criterion for deciding the credibility?

18. Apart from the complexities in determining the weight to be attached to any individual witness, there are some general principles relating to appreciation of oral evidence. The following general principles may be borne in mind before assessing the credibility of individual witnesses:

(a) **Evidence must be taken as a whole for evaluation.** As the various pieces of evidence in any proceedings are with reference to the facts relating to the issues in a particular case, there is an element of commonness among them. Evaluating evidence piece by piece may not lead anyone anywhere. The evidence produced in a case must be considered in its entirety and evaluated.

(b) **Status of the witness is immaterial for assessing credibility:** No doubt that the statements made by the various witnesses in an Inquiry Proceedings are to be evaluated. This may lead to the rejection, in whole or in part, of the statements of some of the witness, and the acceptance of the
statements of some others. But the acceptability or otherwise of a witness does not depend upon the official status of the witness.

(c) **Affirmative statements carry more weight than denials**: If one witness deposes to the effect that something occurred and another witness states that he was also present in the place at that time and no such thing occurred, **other things being equal**, greater weight must be attached to the statement of the one who affirms the occurrence of the event.

(d) **Number of witnesses deposing a fact is not relevant**: We have already seen that evidence must be weighed and not counted. Thus, the number of witnesses deposing to a fact does not add credibility to same. Decision making authority is at liberty to believe one witness against many deposing to the contrary, provided the former is above reproach and suspicion.

(e) **Even unimpeached witness can be rejected**: During the proceedings, each party will try to assail the credibility of the witness led by the opposite party. During cross-examination, the effort is normally to make the Inquiry Officer believe that the witness is unreliable. Even if a witness has not been established as unreliable, it is not necessary for the deciding authority to believe the witness. Thus, the credibility of a witness does not depend solely upon the contradictions, inconsistencies brought out during cross examination or the depositions made by other witnesses. A famous author once remarked, “Evidence to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself, such as, the common experience and observation of mankind can approve as probable under the circumstances.” If the statement of a witness is contrary to the laws of nature or the ordinary human experience, the decision making authority is well within his right to reject, even though the statement has not been controverted. Eg. If a person asserts that he was reading in moonlight, the Inquiry Authority may reject this even if the opposing party did not make any effort to assail the statement.

(f) **Evidence may be partly accepted**: It is not uncommon for the parties to establish truth with the help of false evidence. Hence, if a part of the statement of witness has been established, as false, it is not necessary to reject the entire evidence on this score. It is an admitted fact, that witnesses need not be wholly reliable. If a witness can not be believed in certain aspects of his depositions, it is no reason to reject his entire evidence.

(g) **Rejection of the evidence of one, by it self, cannot constitute proof of the evidence of another**: During the proceedings, two parties would lead evidence to establish conflicting facts. If the witness led by one of them has been found to be lacking in credibility, the deciding authority may reject the same. However, the rejection of the evidence of one cannot be the basis for accepting the evidence of the opposite party. The evidence of the opposite party may be acceptable only if it passes the test of credibility.
(h) More weight is given to the actions than to words. Other things being equal, evidence relating what happened, carries more weight than evidence relating to what was told. Obviously, words are more prone to be misunderstood and misrepresented.

19. The more difficult aspect of the process of the evaluation of evidence comprises determining the reliability of the witnesses. The weight to be attached to a witness is the cumulative outcome of a number of complex factors. It may not be possible to draw a comprehensive list of the factors, which determine the credibility of a witness. Besides, it may not be possible to lay down the inter-se importance of these factors by assigning a numerical index. It is for the decision making authority to determine as to which of these factors are more important than the others. The factors mentioned below cannot conclusively establish as to whether the witness must be believed or disbelieved. The list of factors given below only indicates the types of questions which the Inquiry Officer should ask at the time of evaluation of evidence:

(a) **Integrity of the witness:** If a witness has been established as a person of bad character, the statements made by him are taken with a pinch of salt (or may be a ton of salt!)

(b) **Competence:** Whether a witness is competent to assert what he is asserting is another question, which has to be considered by the Inquiry Officer. The basic rule is that even the most honest person can understand only what he is capable of understanding and hence cannot vouch for what he is incapable of perceiving. Competence as such depends upon many factors such as intelligence, familiarity with the language, knowledge, etc. Even a witness who is sincere and honest may mislead the Inquiry Officer with wrong information, which he himself has perceived wrongly. The intellectual capacity of a witness is a strong factor in determining his credibility.

(c) **Interest in the case:** The amount of interest a witness has in the outcome of the case is a significant factor in determining the weight to be attached to the case. It may be easily admitted that, often, the colleagues, friends and relatives of a person are better placed to depose about the incidents in which the above person is accused or a victim. Hence, they will be natural witnesses in such cases. It would not be fair on the part of the Inquiry Officer to reject the evidence tendered by relatives, friends and colleagues. At the same time, one should not be unmindful of the fact that such a person may have an interest in the outcome of the proceedings. Any witness who is interested in the outcome of a case is likely to distort truth to suit the purpose.

(d) **Demeanour:** Demeanour i.e. the behaviour and appearance of the witness, is a very important clue to the truth of the deposition. While an exhaustive list of the components of demeanour may not be possible, the following items may be of help in assessing the demeanour of the witness:
i) hesitation
ii) doubts
iii) pace of deposition
iv) variations in tone
v) confidence
vi) calmness
vii) posture
viii) eye contact or the lack of it
ix) facial expression i.e., bright or pale, etc.

An Inquiry Officer is required to take notes of the demeanour of the witness as and when the latter makes his statement. This note may be consulted while evaluating evidence. In this context, it is worth remembering that the Criminal Procedure Code specifically provides that the Magistrate shall make a note of the demeanour of the witnesses.

(e) **Consistency:** The amount of consistency in the statements of a person is directly proportional to the credibility of his evidence. While examining consistency, due regard must be paid to the fact that human beings are prone to forget facts with passage of time. Similarly, it is also likely that the quantum of information furnished may vary with circumstances. A person may furnish a sketchy report of what has happened when he would have been pre-occupied with what help must be done to the victim. Later on he may come out with a more detailed narration of the same incident. Hence allowances must be made for the vagaries of human memory and observation. Separable exaggerations and super additions, which do not go into the root of the matter may have to be ignored. Minor discrepancies add to the truthfulness of the statements. However, the discrepancies in the material part of the evidence cannot be easily passed over.

(f) **Conformity of the testimony with experience:** The deciding authority may view that a statement of a witness to be unacceptable on the basis of the former’s knowledge, observation and experience of the laws of nature, human conduct, etc.

(g) **Conformity with the statements of other witness.** The truth of a person’s statement can be ascertained by comparing it with the statements of other witness.

20. Despite the above, the task of evaluation of evidence continues to be a highly subjective area leaving much to the experience and attitude towards life.
Chapter 44

REPORT OF THE INQUIRY OFFICER

INTRODUCTION

An oral enquiry is held to ascertain the truth or otherwise of the allegations levelled against the delinquent Government servant. The report of the Inquiry Officer is intended to serve the basis on which the disciplinary authority has to take a decision as to whether or not the imposition of any penalty on the Government servant is called for. It is, therefore, obligatory on the part of the Inquiry Officer to consider the entire evidence adduced during the enquiry before submitting his report to the Disciplinary Authority. The Inquiry Officer should take into consideration all the circumstances and facts of the case, as a rational and prudent man, and draw his conclusions as to whether the charges are proved or not. Each conclusion should be based on cast iron logic. The Supreme Court in the case of Girdhari Lal Vs. Assistant Collector, 1970(2) S.C.C. 530 has emphasized the need for correct assessment of evidence on an objective analysis based on cast iron logic. The Inquiry Officer should submit his report in writing, duly signed by him. In case the Inquiry Authority is a Board consisting of more than one Member, each member of the Board of Inquiry should sign the report.

REPORT TO BE BASED ON EVIDENCE ADDUCED DURING THE INQUIRY

It is now an established principle that the Inquiry Officer while writing his report, should rely only on the evidence adduced during the inquiry and that he should not make use of any material which is not brought to his notice during the course of the enquiry. The Supreme Court of India, in the case of State of Assam Vs. M.K. Das, 1970 (SC) SLR 444 has observed as under:-

"It is highly improper for an Inquiry Officer during the conduct of inquiry to attempt to collect any materials from outside source and not make that information so collected, available to the delinquent officer and, further make use of the same in the inquiry proceedings. There may also be cases where a very clever and astute Inquiry Officer, may collect outside information behind the back of the delinquent officer and, without any apparent reference to the information so collected, may have been influenced in the conclusion recorded by him against the delinquent officer concerned. If it is established that the material behind the back of the delinquent officer has been collected during the enquiry and such material has been relied on by Inquiry Officer, without its having been disclosed to the delinquent officer it can be stated that the inquiry proceedings are vitiated."

PERSONAL KNOWLEDGE OF INQUIRY OFFICER NOT TO BE USED

The next question that arises is whether the Inquiry Officer can make use of his personal knowledge and whether his report should be influenced by it. Now since the accepted principle in disciplinary proceedings is that the Inquiry Officer should consider only that evidence which has been produced during the enquiry, it follows
that no material from personal knowledge of the Inquiring Authority bearing on the facts of the case which has not appeared either in the articles of charge or the statement of imputations or in the evidence adduced at the enquiry and against which the delinquent Govt. servant has had no opportunity to defend himself should be imported into the case.

It is incumbent on the Inquiry Officer to consider all the material brought on record. He cannot afford to omit any materials, which have been produced during the course of the enquiry, from his consideration. The report of the Inquiry Officer has to be based on the evidence adduced during the enquiry and anything happening before or after the enquiry has no relevance. It is the duty of the Inquiry Officer to ensure that no part of evidence which the accused Govt. Servant was not given an opportunity to refute, examine, explain or rebut has been relied on against him.

REPORT NOT TO CONTAIN RECOMMENDATIONS ON QUANTUM OF PUNISHMENT

The CCS (CCA) Rules, 1965 lay down that the Inquiring Authority is required to give a finding on the articles of charge whether or not the same are proved, not proved or partially proved. The power to decide the quantum of punishment is vested in the disciplinary authority under Rule 15 of the above said rules, The Inquiry Officer is, therefore, not empowered to give recommendations as to the quantum of punishment in his report. The Inquiry Officers should avoid this. However, if the Inquiry Officer recommends the quantum of punishment in his report, it will not vitiate the enquiry since it amounts only to a recommendation which the disciplinary authority is not bound to accept. The above position has been admirably brought out by the Supreme Court in the case of Union of India Vs. H.C. Goel AIR 1964 S.C. 364 wherein it has observed as under:

"Unless the statutory rule or the specific order under which an officer is appointed to hold an enquiry so requires, enquiry officer need not make any recommendation as to the punishment which may be imposed on the delinquent officer, in case the charges framed against him, are held proved at the enquiry, if however, the enquiry officer makes any recommendations, the said recommendations like his findings on the merits, are intended merely to supply appropriate material for the consideration of the Government. Neither the findings nor the recommendations are binding on the Government vide A.N.D. Silva Vs. Union of India, AIR 1962 SC 1130."

REPORT OF INQUIRY OFFICER TO CONTAIN REASONS FOR FINDINGS

The disciplinary proceedings have been declared as quasi-judicial proceedings (H.C. Goel's case) by the Supreme Court. It is a characteristic of such proceedings that conclusions should not only be based on reasons, but the reasons should be made known. Disclosure of reasons guarantees consideration. The condition to give reasons minimises arbitrariness, it gives satisfaction to the party against whom the report is made and it also helps the appellate authority to remove any imbalances in the enquiry report while deciding the appeal. (Madhya Pradesh Industries Vs. Union of India. AIR 1966 SC 671) it also enables the disciplinary authority to come to an independent decision of his own regarding the guilt of the charged official. In the case of Bhagat Raja Vs. Union of India (1967)Z SCR 302 it has been held that if an
order does not give any reasons, it does not fulfil the elementary requirements of a quasi-judicial process. Both the above cases highlight the need for a reasoned report by the Inquiry Officer.

WHETHER INQUIRY OFFICER CAN RECORD FINDING ON ADDITIONAL CHARGE?

An Inquiry Officer can record a finding on a charge not included in the charge sheet served on the Govt. servant in view of the explanation under Rule 23(i) of the CCS (CCA) Rules, 1965. The rules provide that if the Inquiry Officer is of the opinion that the proceedings of the enquiry establish any article of charge different from the original articles of charge, he may record his findings on such article of charge provided that the Government servant has either admitted the facts on which such article of charge is based or he has had a reasonable opportunity of defending himself against such article of charge. Normally the Inquiry Officer restricts his findings to the articles of charge communicated to the accused officer. However, if he is of the opinion that a charge other than those included in the charge sheet is established, he can record his findings on such additional charge only if any of the following two conditions are fulfilled:

(i) that the charged officer has admitted the facts on which such article of charge is based; or

(ii) that the charged officer was given reasonable opportunity to defend himself against such charge during the course of the enquiry.

GUIDELINES FOR DRAFTING THE REPORT

Whether Evidence Act and Criminal Procedure Code are applicable to Departmental Enquiries?

The emphasis in Departmental inquiries is heavily on facts. The rules also enjoin that whatever the Inquiry Officer does should be lawful and in accordance with the rules on the subject. A legalistic approach is not called for as the legal principles with which the Inquiry Officers are primarily concerned are only the principles of natural justice. The Indian Evidence Act and the Criminal Procedure Code are not applicable in departmental enquiries except in so far as these relate to the principles of natural justice. (State of Orissa Vs. Murlidhar Janna, AIR 1963 SC 404).

STANDARD OF PROOF IN DEPARTMENTAL ENQUIRIES

The standard of proof required in departmental enquiries differs materially from the standard of proof required in a criminal trial. The Supreme Court has, in the case of Union of India Vs. Sardar Bahadur 1972 Lab.I.C.(S.C.)627 given a clear ruling that a disciplinary proceeding is not a criminal trial and the standard of proof required in a disciplinary enquiry is that of preponderance of probability and not proof beyond reasonable doubt. (Also see the case of State of AP Vs Sree Rama Rao, 1964 3 SCR 233).
FORM AND CONTENT OF THE REPORT

Rule 14(23 of the CCS (CCA) Rules, 1965 makes it obligatory on the part of the Inquiry Officer to prepare a report since it provides that after the conclusion of the enquiry, a report shall be prepared. The report shall be in the narrative form and shall contain

(i) an introductory paragraph indicating the terms of reference under which the enquiry was held, i.e. a reference to the order appointing the Inquiry Officer, and the dates and places at which the enquiry was held;

(ii) broad statement of the case under enquiry including the articles of charge and statement of imputations of misconduct or misbehaviour or a gist thereof;

(iii) charges which were admitted or dropped or not pressed, if any, during the preliminary hearing;

(iv) the charges that were not admitted and actually enquired into;

(v) any points arising out of the inspection of listed documents asked for by the Charged Officer including brief statement of facts and documents which were admitted;

(vi) brief statement of the case of the disciplinary authority in respect of the articles of charge actually enquired into and the gist of the evidence produced on behalf of the disciplinary authority, material evidence getting a place of pride;

(vii) statement of defence of the charged official, and the defence evidence adduced during the enquiry, mention being made whether the Charged Official examined himself as his own witness;

(viii) points for determination arising out of the statement or prosecution case and defence case;

(ix) an objective analysis of the evidence adduced during the enquiry from both sides and assessment of the same in respect of each point set out for determination and the finding thereon;

(x) finding on each article of charge with reasons therefor;

(xi) signature of the Inquiring Authority.

The Inquiry Officer after he has signed and submitted the enquiry report becomes functus officio and has no power to change, modify or amend his report.
DISPUTE AS TO HAPPENINGS DURING THE INQUIRY

In case of a dispute arising at a later stage as to what happened before the Inquiry Officer during the course of the enquiry, the statement of the Inquiry Officer in this regard will be generally accepted as correct. (Union of India Vs. T.R. Verma, AIR 1957 Sc. 882). It is for this reason also that the Inquiry Officer should maintain a daily order sheet giving in brief the happenings of each day of the enquiry. The daily order sheet is the property of the Inquiry Officer and normally no one else, i.e. the Charged Officer or the Presenting Officer has a right to write anything on it except to append their signature at the end of the proceedings on each day. In the event of difference of opinion, a written representation should be made to the Inquiry Officer. However, if the Charged Officer or the Presenting Officer writes some remarks on the daily order sheet, the Inquiry Officer should note his further remarks, sign the daily order sheet and keep the same as part of the record of the enquiry.

MISBEHAVIOUR BEFORE INQUIRY OFFICER BY THE CHARGED OFFICER

At times the Charged Officer may misbehave with the Inquiry Officer. The question arises whether the Inquiry Officer can proceed against such an official for misbehaviour. The answer is that an Inquiring Authority appointed under the CCS (CCA) Rules, 1965 by the disciplinary authority is not a 'Court' as defined in the Contempt of Court Act. Further, the Inquiry Officer, not being the disciplinary authority, for the Charged official cannot proceed against him for misbehaviour in the proceedings before him. The Inquiry Officer, in such a case should make a report of the misbehaviour of the Charged official during the inquiry to the disciplinary authority, who, after considering the facts of the case, may initiate a separate disciplinary proceeding against the official as misbehaviour with the Inquiry Officer constitutes misconduct.

RECORD OF THE INQUIRY TO BE FORWARDED TO DISCIPLINARY AUTHORITY

The Inquiring Authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of the inquiry after he has written and signed his report. The record of the inquiry shall include:-

(i) The report of the inquiry prepared by the Inquiry Officer with spare copies as required;
(ii) a folder containing the list of exhibits and the documents produced during the inquiry on behalf of the disciplinary authority and the Charged officer;
(iii) a folder containing the list of witnesses produced on behalf of the prosecution and the defence separately along with their depositions arranged in the order in which they were examined during the inquiry;
(iv) a folder containing written statement of defence, if any, written briefs filed by both sides, if any.
(v) a folder containing daily order sheets and applications, if any, submitted during the inquiry and orders passed thereon along with orders of the disciplinary authority and the Inquiry Officer relating to the inquiry.

The Inquiring Officer is required to forward to the disciplinary authority his report together with the record of the inquiry including the exhibits and spare copies of the report as follows:

(i) as many copies as the number of accused;
(ii) one copy for the Special Police Establishment in cases investigated by them.

Cases in which the inquiry is held by a Commissioner for Departmental Enquiries, the report and the record of inquiry is sent to the Central Vigilance Commission, who in turn will forward it to the disciplinary authority with their advice as to further course of action. However, where an officer other than the Commissioner for Departmental Enquiries has been allowed by the Central Vigilance Commission to act as an Inquiry Officer, the report of such Inquiry Officer together with the record of the enquiry will be sent to the Disciplinary authority who will forward the case to Central Vigilance Commission, for their second stage advise about the further course of action.
Chapter 45

ACTION ON INQUIRY REPORT

The report of the Inquiring Authority is intended to assist the disciplinary authority in coming to a conclusion about the guilt of the employee. Its findings are not binding on the disciplinary authority who can disagree with them and come to its own conclusion on the basis of its own assessment of the evidence on record.

FURTHER INQUIRY

On receipt of the report and the record of the inquiry, the Disciplinary Authority has to satisfy itself that the inquiry does not suffer from any procedural lapses. It may be possible that in a particular case there has been no proper inquiry or that there is any defect in the inquiry, viz, the Inquiring Authority had taken into consideration certain factors without giving the delinquent officer an opportunity to defend himself in that regard, the disciplinary authority may, for reasons to be recorded in writing, remit the case to the Inquiring Authority for further inquiry and report.

A further inquiry may be ordered, for example, when there are grave lacuna or procedural defects and not because the first inquiry has gone in favour of the delinquent office. In this connection, the Rajasthan High Court has observed in case of Dwarka Chand Vs State of Rajasthan (AIR 1958 Raj 38) that “If we were to hold that a second departmental inquiry could be ordered after the previous one has resulted in the exoneration of a public servant the danger of harassment to the public servant, would, in our opinion, be immense. If it were possible to ignore the result of an earlier departmental inquiry, there will be nothing to prevent a superior officer, if he were so minded, to order a second or a third or a fourth or even a fifth departmental inquiry after the earlier ones had resulted in the exoneration of a public servant”.

The Disciplinary Authority is empowered to order a limited further inquiry only and that too for sound reasons to be recorded in writing. A denovo inquiry is not permitted and the expression “remit the case to the Inquiring Authority has been interpreted by Jabalpur Bench of the CAT (in the case of M.S. Halwve Vs UOI 1987 SLJ 687) to mean remission to the same Inquiring Authority.

REPORT TO BE SENT TO C.O.

Before taking a decision on the guilt of the employee, the Disciplinary Authority, if it is not the Inquiring Authority has to forward a copy of the inquiry report to the employee concerned with the following endorsement:
Disciplinary Authority will take suitable decision after considering the report. If you wish to make any representation or submission, you may do so in writing to the disciplinary authority within 15 days of receipt of this letter.

(DOP&T OM No.11012/13/85-Estt.(A) dated 26-6-89)

It is incumbent on the Disciplinary Authority to consider the representation before giving a verdict of guilty against the employee.

**STATEMENT OF DISAGREEMENT WHEN CHARGES ARE HELD AS NOT PROVED**

The report of the Inquiring Authority is not binding on the Disciplinary Authority who has to apply its mind and arrive at its own conclusions. The findings of the Inquiring Authority on merits are intended to supply appropriate material for the consideration of the Disciplinary Authority. Where the Disciplinary Authority disagrees with the findings of the Inquiry Officer, it should give reasons for disagreement, and also record its own findings on such charges if the evidence is sufficient for the purpose.

**IMPOSITION OF MINOR PENALTY**

Having regard to its own findings on the articles of charge, if the disciplinary authority is of the opinion that the articles of charge have not been proved and that the charged officer should be exonerated, it will make an order to that effect after consulting the Union Public Service Commission, if necessary.

If the disciplinary proceedings were instituted by a higher authority competent to impose major penalty and on receipt of the report and record of the inquiry, it is of the opinion that a minor penalty will meet ends of justice, the final order imposing a minor penalty should be passed by the same disciplinary proceedings and not by the lower disciplinary authority.

**IMPOSITION OF MAJOR PENALTY**

If the disciplinary proceedings were initiated by the authority competent to impose minor penalty and if such authority is of the opinion that any of the major penalties should be imposed on the C.O., it will forward the record of the inquiry along with the inquiry report and representation of the C.O. thereon to the authority competent to impose major penalty for further necessary action.

If the disciplinary authority having regard to its findings and on the basis of evidence adduced during the inquiry, is of the opinion that any of the major penalties should be imposed on the C.O., it shall make an order to that effect after consultation with the UPSC, if necessary. It shall not be necessary to give the C.O. and opportunity of making representation on the penalty proposed to be imposed.
It is the prerogative of the disciplinary authority to decide upon the quantum of the penalty to be imposed on the C.O. In determining the quantum of punishment, the disciplinary authority should take into account only that material which the C.O. had the opportunity to explain and no material of which the C.O. was not given prior notice should be relied upon in this regard.

In case of borrowed officer, the borrowing authority shall replace his services at the disposal of the lending authority and transmit to it the record of the inquiry for further necessary action.

Past bad record of service should be considered for determining the quantum of punishment only when it had been made specific charge in the charge sheet otherwise its mention would vitiate the disciplinary proceedings.
Chapter 46

FINAL ORDER TO BE SPEAKING ORDER

The final order being a quasi-judicial order, should be a speaking order. In the case of Bhagar Raja Vs. UOI AIR (1967) s(SC) 302 it has been held that if an order does not give reasons, it does not fulfil the elementary requirements of a quasi-judicial process. A plea was taken before the Supreme Court in the case of MP Industries Vs UOI AIR 1966 SC 617 that giving reasons might involve delay. Rejecting this contention, the Supreme Court has observed:

“"The least a tribunal can do is to disclose its mind as disclosure guarantees consideration. The condition to give reasons minimises arbitrariness, it gives satisfaction to the party against whom the order is made; and it also enables appellate or supervisory court to keep the tribunal within bounds”.

A final order passed by the disciplinary authority must discuss the department’s case, the defendant’s case, the evidence of both parties, the reason why the Department’s evidence is more acceptable than that of the Charged Officer. The authority must record separate findings on each of the charge. Simply using the words, “applied his mind” or “on objective assessment” does not make the order a Speaking Order. It must be disclosed in the order itself as to how the mind worked, on what material and how the findings were reached. The order must disclose that the evidence has been objectively assessed, both for conclusion of guilt and appropriateness of punishment.
Chapter 47

SPECIAL PROVISIONS

(A) EX-PARTE PROCEEDINGS

[Rule 14(20) of CCS(CCA) Rules]

1. If the charged officer does not submit his written defence within the time specified or does not appear before the Inquiry Officer or otherwise fails or refuses to comply with the provision of the rules, the Inquiry Officer may hold the inquiry ex-parte, recording reasons for doing so. For conduct of ex-parte proceedings see instructions contained in Instruction (6) under Rule 14.

2. Ex-parte proceedings, however, do not mean that finding should be given without investigation. Inquiry is still necessary, although it would be in the absence of the charged officer. It has to be borne in mind that the Inquiry Officer’s job is not at all affected by the absence of the charged officer. He is charged with the scrutiny of the evidence, both verbal and recorded, and then come to a finding respecting each article of charge. The only difference is that the employee has denied himself the opportunity of cross-examining the prosecution witnesses and producing and examining his own witnesses. The absence of the charged officer does make it a little complicated for the Inquiry Officer to come to a conclusion in the absence of the explanation of the charged officer. The Inquiry Officer has to examine the records and witnesses to enable him to come to a valid conclusion as to the culpability of the charged officer based on the evidence led before him. If the Inquiry Officer has done all this, the charged officer cannot later on plead that he was not given reasonable opportunity. Even in ex-parte inquiry, the Inquiry Officer has to fix a date of hearing and intimate the same to the defendant. If he absents himself from the inquiry at one stage, it does not take away his right to attend the inquiry at any other subsequent stage. The charged officer should be allowed to participate in the inquiry at any stage he likes. However, if he does, the ground already covered will not be repeated. All that the Inquiry Officer has to ensure is that he comes to a finding solely on the basis of evidence, both oral and documentary produced before him.

Procedure for holding ex-parte inquiry - Whenever an official continues to remain absent from duty or overstays leave without permission and his movements are not known, or he fails, to reply to official communications, the disciplinary authority may initiate action under Rule 14 of the CCS(CCA) Rules, 1965. In all such cases, the competent authority should, by a Registered A.D. letter addressed to the official at his last known address, issue a charge-sheet in the form prescribed for the purpose and call upon the official to submit a written statement of defence within a reasonable period to be specified by that authority. If the letter is received undelivered or if the letter having been delivered, the official does not submit a written statement of defence on or before the specified date or at a subsequent stage does not appear in person before the inquiry officer, or otherwise, fails or refuses to comply with the provisions of CCS(CCA) Rules, the inquiring authority may hold an ex-parte inquiry. The notices of all hearing should be served on the accused or communicated to him unless the first notice says that the Inquiry will continue from day to day. In ex-parte proceedings, the entire gamut of the inquiry has to be gone
through. The notices to witnesses should be sent, the documentary evidence should be produced and marked, the Presenting Officer should examine the prosecution witnesses and the inquiry authority may put such questions to the witnesses as it thinks to be fit. The enquiring authority should record the reasons why he is proceeding ex-parte and what steps he had taken to ask the accused official to take part in the inquiry and avail of all the opportunities available under the provisions of Rule 14 of the CCS(CCA) Rules. In such a case, the details of what has transpired in his absence, including depositions, should be furnished to the accused officer. During the course of inquiry, the accused is free to put in appearance and participate in the inquiry. If the accused appears in the inquiry when some business has already been transacted, it is not necessary to transact the same business again unless the accused official is able to give justification to the satisfaction of the inquiry officer for not participating in the inquiry earlier. The competent authority may, thereafter, proceed to pass the final orders dismissing or removing the official from service after following the prescribed procedure.

3. The procedure outlined above can be observed in the case of a Government servant whether permanent or temporary remaining absent without authority, etc. Such a government servant should not be placed under suspension but when an official who is under suspension disappears and cannot be contacted at his last known address, the suspension orders should be lifted and the proceedings in the manner stated above initiated for his removal in absentia.

(Rules 63 and 64, P&T Manual, Vol.III)

(B) COMMON PROCEEDINGS

[Rule 18 of CCS(CCA) Rules]

The Rule says:

1. Where two or more Government servants are concerned in any case, the President 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 proceeding.

NOTE If the authorities competent to impose the penalty of dismissal on such Government 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 above.

1. Subject to the provisions of sub-rule (4) of Rule 12, any such order shall specify

   i) the authority which may function as the disciplinary authority for the purpose of such common proceeding:
ii) the penalties specified in Rule 11 which such disciplinary authority shall be competent to impose;

iii) Where the procedure laid down in rule 14 and rule 16 shall be followed in the proceeding.

Government of India Instructions:-

1. Procedure of inquiry when two Government servants accuse each other – In a recent case, two Government employees working in the same office made complaints against each other. The disciplinary authority initiated departmental proceedings against both the employees under Rule 17 of the CCS(CCA) Rules. The question whether it is legally permissible to enquire into the conduct of the accused and the accuser in one joint proceedings was examined in consultation with the Ministry of Law. Cross complaints arising out of the same or connected incident or transaction are not uncommon, and occur frequently in criminal cases. The Code of Criminal Procedure is silent with regard to the procedure to be adopted in such cases. The general principle as laid down by the Courts is that the accused in cross cases should be tried separately and that both the trials should be held simultaneously or in quiche succession so as to avoid conflicting findings and different appraisal of the same evidence. On the analogy of the criminal law practice and procedure, a joint proceeding against the accused and accuser is an irregularity which should be avoided. This should be noted for future guidance.

2. A joint proceeding against government servants working in the same office who made complaint against each other should be avoided.

(C) Special Procedure in Certain Cases

[Rule 19 of CCS(CCA) Rules]

Rule 19 States –

Notwithstanding anything contained in Rule 14 to Rule 18 –

i) Where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

ii) Where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

iii) Where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules,

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:
[Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (1):

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule].

Explanatory Note:

1. Clause (1) of Rule 19 of the CCS(CCA) Rules before its substitution by Notification dated the 11th March, 1987, envisaged that in a case where a Government servant has been convicted in a Court of Law, the disciplinary authority may, if it comes to the conclusion that an order with a view of imposing a penalty on him on the ground of conduct which had led to his conviction on a criminal charge should be issued, pass such an order without following the prescribed detailed procedure under Rule 14, 15 and 16 of the said rules.

2. By Notification, dated the 11th March, 1987, the first proviso to Rule 19 has been substituted providing for giving the Government servant an opportunity of making representation on the penalty proposed to be imposed before any order is made in case under clause (1). According to this, the disciplinary authority should itself in the first instance hold an inquiry, in which the Government servant concerned should be given a chance to explain and defend the case. No charge sheet is required to be served as the charges have already been established in the court. A copy of the skeleton inquiry report held should be furnished along with the show cause notice referring only to the extenuating circumstances, if any, brought forward by the convicted official and the gravity of the criminal charge, for provisionally deciding the quantum of penalty which may be finalised after taking into consideration the reply submitted by him in response to the show-cause notice served.

3. Rule 19(ii) of the CCS(CCA) Rules, 1965 [clause (b) of the second proviso to Article 311 (2)] provides, in the peculiar circumstances of a case, for the disciplinary authority to make such orders as it deems fit without holding an inquiry, in case it is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to hold an inquiry in the manner laid down in the rules. Detailed guidelines in this regard are set out in Instruction (4) below Rule 19. It should be clearly noted that the disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department’s case against the civil servant is weak and is, therefore, bound to fail. Further it is a constitutional obligation that the disciplinary authority should record in writing the reasons for its satisfaction that it was not reasonably practicable to hold the inquiry and preferably in the order of penalty itself. The reasons given, though may be brief, should not be vague or should not be just a repetition of the language of the relevant rules.
Chapter 48

APPEAL, REVISION AND REVIEW

INTRODUCTION

The CCS (CCA) Rules, 1965 provide for appeal to the prescribed appellate authorities against orders passed by the disciplinary authorities imposing any of the statutory penalties mentioned in Rule 11 of the above said rules and against orders of suspension made under Rule 10 ibid. However, there are certain orders against which no appeal lies as per Rule 22 ibid. These are:

i) Any order made by President.
ii) Any order of interlocutory nature or of the nature of step-in-aid or 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 14 of the CCS(CCA) Rules, 1965.

The President being the highest authority it is but natural that no appeal shall lie against the orders passed by the President. It is a well-known rule that an appeal lies to an authority higher than the one who made the order appealed against. Similarly, it stands to reason that there should be no right of appeal against an order of interlocutory nature or in the nature of a step-in-aid. Rule 22 also provides that there shall be no appeal against the orders of the Inquiring Authority. The rationale behind this rule is that appeals are allowed against the orders passed by the Inquiring Authority during the conduct of the enquiry, then the enquiry will take a very long time to be completed, since every order of the Inquiring Authority is likely to be challenged by the charged Government servant in appeal. The enquiry can thus be frustrated for an indefinite period thereby subverting the whole process.

ORDERS AGAINST WHICH APPEAL LIES

Rule 23 of the CCS (CCA) Rules, 1965 entitles a Government servant (the term Government servant includes a person who has ceased to be in Government Service) to prefer an appeal (subject to the provisions of Rule 22 ibid) against all or any of the following orders:

i) An order of suspension made or deemed to have been made under rule 10;
ii) An order imposing any of the penalties specified in Rule 11 whether made by the disciplinary authority or by any appellate or revising authority;
iii) An order enhancing any penalty, imposed under Rule 11;
iv) An order which-
   a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or by agreement; or
b) interprets to his disadvantage the provisions of any such rule or agreement;

v) an order -

a) stopping him at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;

b) reverting him while officiating in a higher service, grade of post, to a lower service, grade or post otherwise than as a penalty;

c) reducing or withholding the pension or denying the maximum pension admissible to him under the rules;

d) determining the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof;

e) determining his pay and allowances -

i) for the period of suspension; or

ii) for the period from the date of his dismissal, or compulsory retirement from service, or from the date of his reduction to a lower service, grade, post, time-scale or stage in a time-scale of pay, to the date of his re-instatement or restoration to his service, grade or post, or

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

Sometimes a doubt is raised whether an appeal against supersession in the matter of promotion can be considered under CCS (CCA) Rules, 1965. It has been clarified by the Ministry of Home Affairs that an appeal against supersession in the matter of promotion will fall within the preview of Rule 23 (iv) and the appellate authority in such a case would be as indicated in Rule 24 ibid. The above clarification of the Ministry of Home Affairs has been circulated by the Govt. of India, Ministry of Defence vide their OM No. PC 318 to MFO 2051/OS/Art.3/D(Appts), dated the 7th June, 1967.

**CAN AN APPEAL ONCE MADE BE WITHDRAWN**

It is the discretion to the authority competent to decide the appeal or petition to allow the appeal or petition to be withdrawn after it has been submitted to it. Since on appeal or petition, the penalty imposed can also be enhanced, the competent authority shall consider whether it is a fit case for enhancement for penalty. If enhancement of penalty is called for, it is open to the competent authority to refuse to allow withdrawal of appeal or petition vide DG.P&T Memo No. SEA-6/15/53 dated 2nd June 1953. The discretion in the matter rests entirely with the competent authority.
APPELLATE AUTHORITIES

The appellate authorities are mentioned in the schedule to the CCS(CCA) Rules, 1965. A Government servant, which term also includes a person who is no longer a Govt. servant, is entitled to prefer an appeal against any order made under the CCS(CCA) Rules, 1965 to the appellate authorities mentioned in the schedule to these rules or otherwise specified in this behalf by a general or special order of the President. In cases where no appellate authority is specified either in the schedule or by a special or general order of the President, the appeal of a Group ‘A’ or a Group ‘B’ officer shall be to the appointing authority. If the order appealed against is made by an authority subordinate to it, and to the President where such order is made by any other authority. An appeal from a Group ‘C’ or Group ‘D’ official will be to the authority to which the authority making the order is immediately subordinate.

An appeal against an order issued in common proceedings held under Rule 18 of the CCS(CCA) Rules, 1965 shall lie to the authority to which the authority functioning as the disciplinary authority for the purpose of that proceeding is immediately subordinate irrespective of the fact that an appellate authority is either specified in the schedule for such a Govt. servant or specified by a general or special order of the President provided that where such authority is subordinate to the President in respect of a Govt. servant for whom President is the appellate authority in terms of sub-clause (b) of clause (i) of sub-rule (1) of Rule 24 of CCS(CCA) Rules, 1965, appeal shall lie to the President.

In cases where the disciplinary authority after making an order of punishment becomes the appellate authority by virtue of his promotion or subsequent appointment or otherwise, he is debarred from functioning as the appellate authority in such cases. Appeal, in such cases, shall lie to the authority to which such an authority is immediately subordinate.

Where the President is the appellate authority and he has on review confirmed the punishment imposed by a subordinate authority, an appeal will still lie to the President against the orders passed by the sub-ordinate authority.

Appeal of a government servant functioning as a union office-bearer and punished for union activities

A Government servant, being an office-bearer of an association, federation or union, participating in Joint Consultation and Compulsory Arbitration Scheme, is entitled to appeal to the President against an order imposing on him any of the penalties specified in Rule 11 of CCS(CCA) Rules, 1965 even when no such appeal lies to him(The President) under Sub-rule(1) or Sub-rule(2) of Rule 24 ibid provided that such penalty has been imposed by any authority other than the President, on such Government Servant for his activities connected with his work as an office-bearer of an association, federation or Union. All appeals to the President, in the types of cases stated above should be placed before the Minister-in-charge for final orders irrespective of whether the general directions relating to the disposal of appeals addressed to the President, require such submission or not. However, in the case of persons serving in the Indian Audit and Accounts Department, such appeals shall be disposed of by the Comptroller and Auditor General of India.(Govt. of India, Ministry of Home Affairs, O.M.No.7/14/64-Ests.(A), dated 18th April, 1967)
Determination of appellate authority when government servant is transferred after imposition of penalty

Para 49 of the P&T Manual Vol.III provides that the Appellate authority in respect of an official is to be determined with reference to the authority which imposed the penalty appealed against and subsequent transfer of the official to a separate office will not be a material consideration for the purpose. In other words, the subsequent transfer of the Govt. servant will not change his appellate authority.

Higher authority directing suspension is not barred from functioning as appellate authority

In a case where a higher authority has issued directions to the competent authority disciplinary authority for placing and official under suspension pending investigation into alleged misconduct, it would not amount to a direction in the matter of initiation or finalisation of the disciplinary proceedings against the official. Accordingly, such a higher authority will not be debarred from acting as an appellate authority, if it is the prescribed appellate authority under the rules.(Para 132 of P&T Manual, val. refers)

PERIOD OF LIMITATION FOR APPEALS

Rule 25 of the CCS(CCA) Rules, 1965 provides that no appeal preferred after 45 days from the date on which a copy of the order appealed against is delivered to the appellate, shall be considered unless the limitation of forty five days is relaxed by the appellate authority. The power of relaxation of the period of limitation for filing an appeal, available to the appellate authority may be used at its discretion. The appellate authority may entertain the appeal after the expiry of the period of 45 days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

FORM AND CONTENT OF APPEAL

Every appeal shall be preferred by the appellant in his own name and should be addressed to the authority to whom the appeal lies. It should contain all the material statements and arguments on which the appellant relies. It should not contain any disrespectful or improper language and should be complete in itself.

While writing an appeal, it should be ensured that it is addressed to the prescribed appellate authority. Where a person is dismissed by the appellate authority, the appeal would lie to the next higher authority. In the case of M.N.Ghosh Vs Director of the Public Instructions(AIR 1958 Cal 49), the facts were that the Director of Public Instructions, who was the appellate authority for Shri MN Ghosh, had passed the order of dismissal and it was pleaded that the order of dismissal in this case could not be passed by the appellate authority as this was the prerogative of the prescribed disciplinary authority. The court observed:

“A person could be dismissed or removed only by an authority of the same rank or by an authority higher than the authority by which he was appointed. As long as, however, the basic limitation is not violated, an order imposing a penalty cannot be held to be contrary to law if it was made by a higher authority or authority of
the same rank. The Director of Public Instructions in the particular case was not precluded from passing the order of dismissal as he was the Head of Department. But as he was the appellate authority mentioned in the schedule of the Rules, the appeal would lie to the next higher authority namely, Secretary to the Government Department concerned."

The appeal should be complete in all respects. It should contain a copy of the report of the Inquiry Officer, if an enquiry was held, the punishment order and other relevant records available with the appellant on which he wishes to rely. Arguments should normally be based on the evidence adduced during the enquiry. As far as possible, extraneous considerations should be avoided.

Withholding of appeal

Under the CCS(CCA) Rules, 1965 there is no provision for withholding of appeals. This is because the appeal under these rules is required to be submitted direct to the prescribed appellate authority with a copy of the authority who made the order appealed against. The punishing authority or any other authority has no control over the submission of an appeal. In the CCS(CCA) Rules, 1957, there was a provision for withholding of appeals, but this provision has been deliberately omitted under the CCS(CCA) Rules, 1965 to avoid unnecessary heart burning created due to the withholding of appeals as it would result in giving the right of appeal by one hand and taking away the same by the other. Under the present Rules, the appeal is to be presented to the authority to whom the appeal lies, direct. A copy being forwarded by the appellate to the authority which made the order appealed against. The authority which made the order appealed against shall on receipt of a copy of the appeal, forward the same with the relevant records to the appellate authority without any avoidable delay, and without waiting for any directions from the appellate authority. With a view to expediting the disposal of appeals in respect of disciplinary cases, the appeals should invariably be forwarded with the following information/records

Punishing authority not to make comments as may influence appellate authority.

In the case of Union of India Vs BS Mishra, 1973 (2) SLR 430 (Raj), Rajasthan High Court has held that it is not competent for the punishing authority whose order is appealed against to make such comments or remarks which may tend to influence the mind of the appellate authority.

CONSIDERATION OF APPEAL

In the case of an appeal against an order imposing any of the penalties specified in Rule 11 of the CCS(CCA) Rules, 1965 of enhancing any penalty imposed under the said rules, the appellate authority, while considering the appeal should consider the following aspects:
(i) Whether the procedure laid down in these rules has been complied with and, if not, whether such non-compliance has resulted in violation of any provisions of the Constitution of India or in the failure of justice;

(ii) Whether the findings of the disciplinary authority are warranted by the evidence on record, and

(iii) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe.

**Appellate authority to appraise the evidence for himself**

The appellate authority is required to appraise the evidence for itself in order to confirm or reverse the findings recorded by the punishing authority. In the case of Debi Deen Vs Divisional Operating Superintendent, Northern Railway and other (SLR-1970-25), the petitioner was proceeded against and was awarded punishment. The punishment order mentioned the charges and the findings without indicating the reasons for findings and for rejecting the explanation given by him. He submitted an appeal to the appellate authority, who rejected his appeal without recording the reasons. The Court allowed the writ for the reason that the appellate authority, who rejected his appeal without recording the reasons. The Court allowed the writ for the reason that the appellate authority is required to consider whether the finding recorded by the punishing authority is justified and is required to appraise the evidence for itself in order to confirm or reverse the findings of the punishing authority. This necessarily implies that reasons must be given for the conclusions arrived at.

**Has the delinquent a right of personal hearing at the time of appeal**

The delinquent has no right to personal hearing during the stage of appeal. The right of personal hearing is intended to be a necessary requirement of the concept of reasonable opportunity to show-cause only at the stage when the evidence is led, cross examination of witnesses is to be done and the demeanour of witnesses is to be watched and not at the stage when the decision is to be taken from record by the appellate authority. The Departmental proceedings are quasi-judicial proceedings. The procedure, as applicable in a trial or proceedings in a Court of Law, is not applicable. The principles obtainable in the court of law even at the stage of appeal, where 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 requirements of a judicial trial or proceedings. In the case of State of Gujarat Vs PB Rumal Bhai(AIR 1969 Guj 260), the Gujarat High Court accepted the plea of the State Government that the delinquent had no right to personal hearing at the stage of appeal. The facts of the case were that respondent, a Police Head Constable was charged with criminal trespass into the compound of the PSI. A departmental enquiry was held as a result of which he was dismissed from service by the order of the SP. The respondent then filed an appeal before the DIG and requested for personal hearing. The request was not allowed and the appeal dismissed by the DIG and hence the court case. The High Court upheld the action of the DIG. However, the Government of India vide Department of Personnel and Training OM No. 11012/11/85-Est.(A) dated 11th November, 1985 and 4th April, 1986 have laid
down the guidelines that where a Govt. servant has been dismissed or removed from service or reduced in rank by applying to his case clause (b) of second proviso to Article 311 (2), i.e. where holding of an inquiry is considered not reasonably practicable, can claim in appeal or revision that an inquiry should be held with respect to the charges on which such penalty has been imposed upon him unless a situation envisaged by the second proviso is prevailing at the hearing of the appeal or revision application. Even in such a case, the hearing of the appeal or revision application should be postponed for a reasonable length of time for the situation to return to normal. This again shows that in normal cases where inquiry has been held, no right of personal hearing at the appellate stage exists.

Whether Minister can dispose off appeal on behalf of the President

The question whether a Minister is competent to dispose of an appeal addressed to the President of India was the subject matter of dispute before the Supreme Court in the case of Union of India Vs Sripati Ranjan Biswan (AIR 1975 SC 1755). The Supreme Court observed that the question which was raised in appeal related to the domain of appointment or dismissal of a Government servant and fell within the ambit of a purely administrative function of the President in the case of a Union Government and of the Governor in the case of the State. Any reference to the President in any rule made under the Constitution must be to the President as the Constitution Head. The President in the discharge of his Executive Powers is required to act with the aid and advice of the Council of Ministers. The disposal of the appeal addressed to the President, by the Minister was, therefore, legal and proper. The President has to act on the advice of the Minister and hence there is nothing wrong if the Minister disposes off the appeal addressed to the President. There is no question of delegation involved in such a matter.

The appellate authority, while considering the appeal, has to ensure that the procedure laid down in the CCS(CCA) Rules, 1965 has been followed by the disciplinary authority before imposing any penalty on the Government servant. But mere non-compliance with the rules or technical defects in the holding of the enquiry will not vitiate the enquiry unless the Government servant adversely or has resulted in the violation of the provisions of the Constitution or in failure of justice, the punishment order becomes ultra vires the Rules of the Constitution or violative of the concept of reasonable opportunity or principles of natural justice and cannot stand. The appellate authority will also consider whether the findings of the disciplinary authority are supported by the evidence on record and whether the conclusions arrived at are logical and correct. That the findings are not based on mere suspicion or conjectures and that there has been no misreading of evidence by the disciplinary authority. It can also examine the sufficiency of evidence, though the Courts of Law have no jurisdiction in this regard. (State of Haryana Vs Rattan Singh(Air 1977-SC512). Finally the appellate authority will also consider whether the penalty imposed is adequate, inadequate or severe taking into account all aspects of the case and pass orders as deemed fit.
Orders by appellate authority

Since the appellate authority is to appraise the evidence for itself, it may, in the light of his findings, pass an order for consulting with the Union Public Service Commission, wherever necessary.

(i) Confirming, enhancing, reducing or setting aside the penalty, or
(ii) Remitting the case to that 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.

Procedure for enhancing minor penalty to major penalty on appeal

Where on consideration of the appeal, the appellate authority is of the view that an enhanced penalty should be imposed on the appellant and if the enhanced penalty is one of the major penalties and an enquiry laid down in Rule 14 of the CCS(CCA) Rules, 1965 has not already been held in the case, the appellate authority shall itself hold such inquiry or direct that such enquiry be held in accordance with the provisions of Rule 14 ibid and thereafter, on consideration of the proceedings of such enquiry make such orders as it may deem fit.

Imposition of a higher major penalty on appeal

If the appellate authority, after consideration of appeal of the appellant, proposes to impose a higher major penalty than the one that has already been imposed and an inquiry under Rule 14 of the CCS(CCA) Rules, 1965, has already been held in the case, the appellate authority shall make such order as it may deem fit.

No order imposing a higher minor penalty than that already imposed in the departmental proceedings shall be made unless the appellant has been given a reasonable opportunity as far as may be, in accordance with the provisions of Rule 16 of the CCS(CCA) Rules, 1965, of making a representation against such enhanced penalty.

So far as appeals against any of the orders mentioned in Rule 23 of the CCS(CCA) Rules, 1965 are concerned, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable. In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 10 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or review the order accordingly.
Need for expeditious disposal of appeals

The need for expeditious disposal of appeals and revisions has been highlighted by seven judges bench of the Supreme Court in their judgement in the case of SS Rathore Vs State of Madhya Pradesh AIR 1990 SC 10. The Court has observed-

“Ordinarily, a period of six months should be the outer limit. That would discipline the system and keep the public servant away from a protracted period of litigation.”

The delay is caused because the authorities vested with the power to dispose off appeals and revisions do not consider to be a governmental business of substance. The approach has to be deprecated. Appeals should be disposed off with utmost expedition.

IMPLEMENTATIONS OF ORDERS IN APPEAL

The authority which made the order appealed against shall give effect to the orders passed by the appellate authority. It is, therefore, necessary that the records along-with the orders of the appellate authority should be passed on to the authority which made the order appealed against with the instructions that the order of the appellate authority may be communicated to the appellant and that the same may be given effect to.

Effect of denovo proceedings when ordered by an appellate authority

When, on consideration of the appeal, the appellate authority makes an order setting aside the punishment order and remits the case for denovo trial, the original proceedings including the charge sheet are deemed to have been quashed unless the stage from which the retrial is to be conducted is specified in the order.(page 126 of the P&T Manual Vol. III ). It is submitted that Rule 27 of the CCS(CCA) Rules, 1965 confer powers on the appellate authority to pass orders:-

(i) confirming, enhancing, reducing or setting aside the penalty; or
(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case.

The use of the word ‘or’ between the two courses of action provided under the above said rule does not imply that the appellate authority can only choose one of the two courses of action i.e. it has no power to set aside the punishment order and at the same time remit the case for denovo trial. It is the considered view of the author, that the appellate authority can set aside the punishment order while remitting the case to the authority which imposed the penalty or to any other authority with such
directions as considered necessary in the circumstances of the case. The process of appeal continues till the authority to whom the case has been remitted submits his report to enable the appellate authority to take a final decision on the appeal. If the penalty already imposed is not set aside, it is not possible to hold denovo inquiry or any further inquiry by the authority to whom the case is remitted by the appellate authority. Interpretation of Rule 27 was the subject matter of an application filed by PN Kaul, Assistant Postmaster, HPO, Jammu Tawi in Chandigarh Bench of Central Administrative Tribunal (1988 (1)-CAT –Chandigarh 333). The short point for consideration in this case was whether the appellate authority can remit the case after setting aside the penalty order imposing the penalty. The Tribunal (Chandigarh Bench) has held that the appellate authority can remit the case for further inquiry after setting aside the impugned penalty order.

REVISION

Prior to 6th August, 1981 there was no provisions for `Revision’ included in the CCS(CCA) Rules, 1965. Rule 29 of the CCS(CCA) Rules, 1965 provided for `Review’ by the authorities mentioned in the aforesaid rule. The President could review his own orders any number of times under this rule. However, in the case of RK Gupta Vs Union of India and another(Civil writ petitions No.196 of 1978 and 223 of 1979, the High Court of Delhi has held that under Rule 29 of the CCS(CCA) Rules, 1965-

1) The President has power to review any order under the CCS(CCA) Rules, 1965 including an order of exoneration, and

2) the aforesaid power of review is in the nature of revisionary powers and not in the nature of reviewing one’s own order.

The above judgement of the Delhi High Court would indicate that the ‘President’ cannot exercise his revisionary powers in a case in which the power has already been exercised after full consideration of the facts and circumstances of the case. There is, however, no objection to providing for a review by the President of an order passed by him earlier in revision if some new fact or material having the nature of changing the entire complexion of the case comes to notice. Accordingly, Rule 29 of the CCS(CCA) Rules, 1965 has been amended to make it clear that the power available under that rule is the power of revision and a new Rule 29 A, has been introduced specifying the powers of the President to make a review of any order passed earlier, including an order passed in Revision under Rule 29, when any new fact or material which has the effect of changing the nature of the case comes to his notice. It may also be noted that while the President and other authorities enumerated in Rule 29 of CCS(CCA) Rules, 1965 exercise the power of revision under that rule, the power of review under Rule 29 A is vested in the President only and not in any other authority. Further this power of review vested in the President by Rule 29A can be exercised by him only when some new facts or circumstances which have the effect of changing the complexion of the case either come to or brought to his notice.
Difference between revision and review

The basic difference between `revision' and `review' is that under `Revision' the order of a subordinate authority is revised by a superior authority. On the other hand under the power of `Review' the authority which had earlier passed the order can review the same with a view to modify, amend, alter or annul the same. This power of `review' is now vested in the President by virtue of Rule 29 A of the CCS(CCA) Rules, 1965 and in no other authority.

Authorities competent to exercise powers of revision

Rule 29(1) of the CCS(CCA) Rules, 1965 provides that the following authorities are empowered to exercise the powers of revision:

(i) The President; or
(ii) The Comptroller and Auditor General in respect of employees of Indian Audit and Accounts Department; or
(iii) The Posts and Telegraphs Board in case of employees of the Posts and Telegraphs Department; or
(iv) The Head of a Department; or
(v) The appellate authority, within six months of the order proposed to be revised, or
(vi) Any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order.

The above mentioned authorities can revise any orders made under the CCS (CCA) Rules, 1965 but cannot exercise this power of revision in respect of any administrative orders made by the subordinate authorities in the exercise of their administrative powers.

Period of limitation

Rule 29(1) of the CCS(CCA) Rules, 1965 provides that any of the authorities mentioned therein may at any time, on his or its own motion or otherwise call for the records of any enquiry and revise any order made under these rules. There is, therefore, no time limit for the exercise of the power of revision by the Competent Authority except where this power is to be exercised by the appellate authority. An appellate authority can exercise the power of revision under Rule 29 only within a period of six months from the date of the order passed by the disciplinary authority. He is duty bound to give an intimation to the concerned employees of his intention to undertake revision within the statutory period of six months. Where an appellate authority fails to give notice of his intention to the concerned employee within the specified period of six months, he cannot exercise the power of revision vested in him by Rule 29(v) of the CCS(CCA) Rules, 1965.
Restriction on power of revision

Apart from the restrictions placed on the appellate authority in the matter of exercise of the power of revision mentioned in para 9.4., there are some other restrictions imposed and the power of revision is not unfettered. It is provided that no proceedings for revision shall be commenced until after -

(i) The expiry of the period of limitation for appeal, or
(ii) The disposal of the appeal, where any such appeal has been preferred.

Further no order for the imposition of a major penalty or enhancing a penalty already imposed can be issued in revision without following the provisions of Article 311 of the Constitution, the statutory Rules, i.e. CCS(CCA) Rules, 1965 and consulting the Union Public Service Commission wherever necessary. Similarly proviso to Rule 29 provides that no power of revision shall be exercised by the Comptroller and Auditor General, the Posts and Telegraphs Board or the Head of the Department unless -

(i) The authority which made the order in appeal, in
(ii) The authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

Application for revision and procedure for revision

A Government servant, on whom any of the penalties mentioned in Rule 11 has been imposed and whose appeal is preferred, has been rejected by the competent appellate authority or the period of filing an appeal has expired, can submit an application for revision to the appropriate Revising Authority. Rule 29(3) provides that an application for revision shall be dealt with in the same manner as if it were an appeal under these rules. It is, therefore, essential that the application for revision should be addressed to the appropriate authority, it should contain all material statements and arguments on which Govt. servant relies and should be couched in respectful and courteous language. The application should be complete in all respects. The Revising Authority is called upon to evaluate the evidence on its own and should generally act in the spirit and with an even handed justice. The Govt. servant does not have a right of personal hearing at this stage(BL Kohli Vs Union of India and Others, SLR 1974 Delhi 679) even when the President or any other Revising Authority proposed to enhance the penalty if an enquiry has already been held. The Supreme Court in the case of FN Roy Vs Collector of Customs, AIR 1957 SC 648 has observed – “There is no rule of natural justice that at every stage a person is entitled to a personal hearing.”
Orders by Revising Authority

The Revising Authority is empowered under Rule 29(1) of the CCS(CCA) Rules, 1965 to:-

(a) Confirm, modify or set aside the order; or
(b) Confirm, reduce or set aside the penalty imposed by the order or impose any penalty where no penalty has been imposed; or
(c) Remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or
(d) Pass such other order as it may deem fit.

Provided no order imposing or enhancing a penalty is made unless the Government servant has been given a reasonable opportunity of making a representation against the penalty proposed. Where it is proposed to impose any of the major penalties or it is proposed to impose any of the minor penalties or it is proposed to impose a major penalty by enhancement from a minor penalty on revision, it would be necessary to hold an enquiry as provided under Rule 14, if necessary to hold an enquiry as provided under Rule 14, if one has not already been held. Where an enquiry had already been held, it would not be necessary to hold an enquiry in the manner laid down in Rule 14 of the CCS(CCA) Rules, 1965 afresh. (BL Kohli Vs Union of India and others – SLR 1974 – Delhi 679). The statutory rules provide that whenever a penalty is enhanced or it is imposed for the first time in revision, where no penalty was imposed earlier, it is necessary to issue a show cause notice to the employee to enable him to make a representation against the proposed penalty within the specified period. The show cause notice would invariably list out the reasons for the proposed penalty. This is essential so that an effective representation is possible.

Final Order

As the proceedings under CCS(CCA) Rules, 1965 are quasi-judicial in nature, the final order to be issued by the revising Authority in revision must be a speaking order. This means that reasons must be given for the conclusions reached.

REVIEW

Rule 29-A has been inserted in the CCS(CCA) Rules, 1965 by the Government of India vide their notification dated 6th August, 1981 as a result of the decision of the Delhi High Court. In the case of Shri RK Gupta Vs Union of India and other (CWP No.196 of 1978). The power of review has now been vested in the President of India where new facts either come to his notice or are brought to his notice which have the effect of changing the complexion of the case. This shows that the scope of the rule is limited. The new Rule 29 A is reproduced below.
“29-A Review- The President may, at any time, either or his 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 the order under review and which has the effect of changing the nature of the case, has come or has been brought to his notice.

Provided that no order imposing or enhancing any penalty shall be made by the President unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties specified in Rule 11 or to enhance the minor penalty imposed by the order sought to be reviewed to any of the major penalties and if an enquiry under Rule 14 has not already been held in the case, no such penalty shall be imposed except after inquiring in the manner laid down in Rule 14, subject to the provisions of Rule 19, and except after consultation with the Commission where such consultation is necessary.”
Chapter 49

ROLE OF UPSC

- UNDER ART. 320 (3) (C) OF CONSTITUTION OF INDIA UPSC HAS TO BE CONSULTED IN ALL DISCIPLINARY MATTERS OF PERSON UNDER GOVT. IN FOLLOWING CASES –
  - ORIGINAL ORDER OF PRESIDENT IMPOSING PENALTIES UNDER RULES
  - PRESIDENT'S ORDER ON APPEAL AGAINST AN ORDER OF PENALTY BY SUBORDINATE AUTHORITY
  - PRESIDENT'S ORDER OVER - RULING /MODIFYING AFTER CONSIDERING PENALTIES BY PRESIDENT OR SUBORDINATE AUTHORITIES.
  - PRESIDENT'S ORDER OF PENALTY IN EXERCISE OF HIS POWERS OF REVIEW & MODIFICATION OF AN ORDER IMPOSING NO PENALTY

ANNUAL REPORT OF NON-ACCEPTED ADVICES THROUGH PRESIDENT FOR LAYING BEFORE PARLIAMENT.

UPSC CONSULTATIONS

WHERE CONSULTATIONS NOT NECESSARY

- ANY MATTER AFFECTING A PERSON BELONGING TO DEFENCE SERVICE (CIV.)
- ANY CASE, PRESIDENT PROPOSES TO DISMISS, REMOVE, REDUCE RANK AFTER BEING SATISFIED OF ITS NECESSITY IN THE INTEREST OF SECURITY OF STATE
- ANY CASE WHERE PRESIDENT PROPOSES ORDER UNDER RULE 3 C.C.S (SAFE-GUARDING OF NATIONAL SECURITY) RULE 195 OR RULE 3 RAILWAY SERVICE (SAFE GUARDING OF NATIONAL SECURITY) RULES - 196 (ART 320 (3) (C) READ IN CONJUNCTION WITH RULE 5 OF UPSC EXEMPTION OF CONSULTATION REGULATIONS 1958)
Chapter 50

PRESENTING OFFICER: TASK LIST

ON RECEIPT OF APPOINTMENT ORDER

1. CHECK IF THE ORDER HAS BEEN ISSUED AND SIGNED BY THE CORRECT OFFICER.

2. CHECK IF THE ENCLOSURES ARE IN ORDER

3. ESTABLISH RAPPORT WITH THE INQUIRY OFFICER; INFORM HIM OF YOUR ADDRESS AND PHONE NUMBER AND PROMISE HIM YOUR CO-OPERATION

4. UNDERSTAND THE CHARGES AND ANALYSE THEM: DETERMINE THE FACTS TO BE PROVED AND THE EVIDENCE NECESSARY FOR PROVING THE FACTS

5. DETERMINE THE PURPOSE OF EACH WITNESS

6. IN CASE OF DOUBT IN STEPS 4 AND 5 GET IN TOUCH WITH THE PREMILIMINARY INVESTIGATION OFFICER OR VIGILANCE OFFICER OR THE ADMINISTRATIVE OFFICER CONCERNED

7. IF NECESSARY, COLLECT THE INFORMATION/DOCUMENTS FROM APPROPRIATE OFFICERS FOR STEPS 4 AND 5

8. IN CASE ANY ADDITIONAL EVIDENCE IS CONSIDERED NECESSARY AS A RESULT OF STEPS 4 TO 7 INITIATE ACTION FOR ITS INTRODUCTION.

ON RECEIPT OF NOTICE FOR PRELIMINARY HEARING

9. ENSURE AVAILABILITY OF ORIGINALS OF THE LISTED DOCUMENTS

10. WORK OUT SUITABLE SCHEDULE FOR INSPECTION OF DOCUMENTS

DURING PRELIMINARY HEARING

11. OBSERVE THE PROCEEDINGS WITH REGARD TO APPOINTMENT OF DEFENCE ASSISTANT; ENSURE CONFORMITY TO RULES

12. DECIDE THE VENUE, DATE AND TIME FOR INSPECTION OF DOCUMENTS IN CONSULTATION WITH THE CHARGED OFFICER AND INFORM INQUIRY OFFICER ABOUT THE SAME
13. IF THE CHARGED OFFICER REQUESTS FOR TOTALLY IRRELEVANT DOCUMENTS AND WITNESSES OBJECT POLITELY AND FIRMLY

14. IF INQUIRY OFFICER ASKS YOU TO COLLECT THE ADDITIONAL DOCUMENTS REQUIRED FOR THE DEFENCE, POLITELY APPRISE HIM OF THE IMPLICATIONS

15. PERUSE THE DAILY ORDER SHEET CARFULLY AND BRING DEVIATION IF ANY, TO THE NOTICE OF THE INQUIRY OFFICER

16. WORK OUT THE ORDER IN WHICH THE STATE/MANAGEMENT WITNESSES ARE TO BE PRESENTED

17. APPRISE THE DISCIPLINARY AUTHORITY ABOUT THE PROGRESS OF THE CASE

DURING INSPECTION OF DOCUMENTS

18. RECEIVE THE CHARGED OFFICER WARMLY

19. ALLOW PARTICIPATION OF DEFENCE ASSISTANT

20. ENSURE THAT THE CHARGED OFFICER AND THE DEFENCE ASSISTANT DO NOT HOLD ANY PEN DURING INSPECTION; ALLOW PENCIL

21. GIVE THE DOCUMENTS ONE AT A TIME UNLESS ABSOLUTELY UNAVOIDABLE

22. KEEP THE DOCUMENTS EQUIDISTANT BETWEEN YOU AND THE INSPECTING OFFICER(S)

23. ALLOW TAKING DOWN OF NOTES BY THE INSPECTING OFFICERS

24. IF ANY DISPUTE ARISES, POLITELY INFORM THE CHARGED OFFICER THAT THE MATTER MAY BE REFERRED TO THE INQUIRY OFFICER

25. NEVER LEAVE THE ROOM DURING INSPECTION OF DOCUMENTS

26. IF LEAVING THE ROOM IS UNAVOIDABLE, SUSPEND THE INSPECTION FOR A SHORT TIME, KEEP THE DOCUMENTS IN CUSTODY AND RESUME INSPECTION AFTER YOU COME BACK

27. ALWAYS KEEP YOUR EYES ON THE DOCUMENTS

AFTER INSPECTION OF DOCUMENTS

28. HAND OVER THE LISTED DOCUMENTS TO THE INQUIRY OFFICER DURING THE NEXT HEARING
29. Ensure that the Inquiry Officer ascertains from the charged officer about the admission/dispute of the documents.

30. Ensure that the admitted documents are signed by you and the charged officer before they are taken on record.

31. Ensure that the information about the admission of documents is reflected in the daily order sheet.

32. Ensure that the details of the documents taken on record are mentioned in the daily order sheet along with their reference such as SE-1, SE-2, etc.

33. Inspect the originals of the additional defence documents obtained by the inquiry officer.

34. Obtain the copies of the documents mentioned in step 33.

35. Plan for the introduction of the disputed documents through oral evidence preferably through the listed witness(s). If it is not possible, identify the witness(es) for this purpose in consultation with disciplinary authority.

36. Obtain permission from the inquiry officer for production of additional witnesses, if necessary, for introducing disputed documents before regular hearing.

BEFORE REGULAR HEARING

37. Ensure that the disciplinary authority has been apprised of the progress.

38. Determine the order in which the witnesses are to be presented.

39. Prepare the list of facts to be established through every witness.

40. Prepare the questions necessary for bringing the facts on record.

41. Anticipate the likely questions during cross examination of each witness.

42. Meet the witnesses in advance and ascertain their availability for the hearing.
43. BRIEF THE WITNESS AS TO WHAT IS EXPECTED OF HIM

44. APPRISE THE WITNESS OF THE LIKELY QUESTIONS DURING CROSS EXAMINATION AND GUIDE HIM TO FACE THE SAME

45. ASSURE THE WITNESS OF YOUR FULL CO-OPERATION

DURING REGULAR HEARING

46. ENSURE ATTENDANCE OF THE STATE WITNESSES AS PER SCHEDULE

47. GET THE WITNESSES INTRODUCED TO THE INQUIRY OFFICER

48. ENSURE THAT THE WITNESS FEELS AT HOME

49. ASK THE MATERIAL QUESTIONS OF THE EXAMINATION IN CHIEF AFTER THE WITNESS SETTLES DOWN

50. AVOID ASKING LEADING QUESTIONS WHICH MAY LEAD TO OBJECTION FROM THE CHARGED OFFICER

51. BEFORE HANDING OVER THE WITNESS FOR CROSS EXAMINATION ENSURE THAT ALL THE NECESSARY FACTS HAVE BEEN STATED BY THE WITNESS

52. OBSERVE THE CROSS EXAMINATION CLOSELY

53. OBJECT TO QUESTIONS WITHOUT ANY BASIS, SCANDALOUS OR INDECENT QUESTIONS AND QUESTIONS INTENDED TO ANNOY OR INSULT THE WITNESS

54. IDENTIFY THE CONFUSIONS CREATED DURING CROSS EXAMINATION

55. FRAME QUESTIONS FOR REMOVAL OF THE CONFUSIONS MENTIONED IN STEP 54

56. CARRY OUT RE-EXAMINATION, IF NECESSARY

57. ENSURE THAT THE STATEMENT OF THE WITNESSES ARE CORRECTLY RECORDED

DEALING WITH DEFENCE WITNESSES

58. TRY TO ASCERTAIN THE PURPOSE OF EACH DEFENCE WITNESS; WRITTEN STATEMENT OF DEFENCE AND THE RELEVANCE MENTIONED BY THE CHARGED OFFICER WHILE REQUESTING FOR THE DEFENCE WITNESSES MAY HELP IN THIS REGARD
59. Gather information about the antecedents of each defence witness, his involvement in the case and his interest in the charged officer

60. Collect evidence to contradict the anticipated statements of the defence witness

61. Identify broad areas for cross examination and prepare questions in each area

62. Observe the demeneour of the witness during examination in chief by the charged officer

63. Watch the pace and tone of deposition; this may indicate if he is narrating from memory or is repeating a tutored text

64. Try to judge the calibre and character of the witness

65. Identify the areas where the witness appears strong and those where he is weak

66. Object to leading questions if any during examination in chief

67. Try to formulate, refine and finalise your questions for cross examination when examination in chief is in progress

68. Commence cross examination with a question most likely to unnerve the defence witness

69. Never allow the witness to guess the purpose of your question

70. Never enter into a debate with the witness

71. Do no show your emotions; donot rejoice over a faltering by the witness;

72. Treat the witness with respect and courtesy

73. Do not assume that the witness is dishonest

74. Do not give opportunity to the witness to correct his mistakes

75. Do not retain the witness after you have got the desired information
ON CONCLUSION OF THE REGULAR HEARING

76. ADHERE TO THE TIME SCHEDULE FIXED BY THE INQUIRY OFFICER FOR SUBMISSION OF THE WRITTEN BRIEF

77. PREPARE THE WRITTEN BRIEF CONFORMING TO THE SUGGESTED FORMAT

78. CONSULT THE VIGILANCE OFFICER OR THE ADMINISTRATIVE OFFICER WITH A COPY OF THE DRAFT

79. FORWARD A COPY OF THE WRITTEN BRIEF TO THE CHARGED OFFICER, IF SO ORDERED BY THE INQUIRY OFFICER

80. COLLECT ACKNOWLEDGEMENT FROM THE CHARGED OFFICER ABOUT THE DELIVERY OF YOUR WRITTEN BRIEF

81. FORWARD COPY OF THE BRIEF TO THE INQUIRY OFFICER, ALONG WITH THE ACKNOWLEDGEMENT OF THE CHARGED OFFICER, WHERE APPLICABLE

82. GIVE COMPLETION REPORT TO THE DISCIPLINARY AUTHORITY ALONG WITH A COPY OF YOUR WRITTEN BRIEF