DISCIPLINARY PROCEEDINGS – CCS(CCA) RULES 1965

It is essential that every organisation, whether government or semi-government or private, should have a well-established reward and punishment system to ensure that the people are made to work towards the fulfilment of the organisational goals. While the reward system will encourage the employees to work better towards the achievement of organisational goals, punishment system is used to prevent people from working against the organisational goals.

2. Misconduct, or non-conforming behaviour, as it is sometimes called, can be tackled in many ways such as counselling, warning, etc. In extreme cases such as, criminal breach of trust, theft, fraud, etc. the employer is also at liberty to take recourse to legal proceedings against the employee with the help of Police system, if the misconduct of the latter falls within the purview of the penal provisions of the law of the land. However such proceedings, generally conducted by the State agencies, are time consuming and call for a higher degree of proof.

3. In addition to the above option, the employer also has an option to deal with the erring employee within the terms of employment. In such an eventuality, the employee may be awarded any penalty which may vary from the communication of the displeasure to the severance of the employer-employee relationship i.e. dismissal/removal from service. An employer can inflict punishment on an employee only after following some statutory provisions depending upon the nature of the organisation.

4. Briefly, the applicability of rules relating to different types of organisations is as under:

(a) **Government**: Part XIV of the Constitution relates to the terms of employment in respect of persons appointed in connection with the affairs of the State. Any action against the employees of the Union Government and the State Governments should conform to these Constitutional provisions, which confer certain protections on the Government servants. These provisions are applicable only to the employees of the various Ministries, Departments and Attached and Subordinate Offices. In addition to the constitutional provisions, there are certain rules which are applicable to the conduct of the proceedings for taking action against the erring employees. Central Civil Services (Classification, Control, and Appeal) Rules 1965 covers a vast majority of the Central Government employees. Besides, there are also other Rules which are applicable to various sections of the employees in a number of services.

(b) **Semi Government Organisations**: By this we mean the Public Sector Undertakings and Autonomous Bodies and Societies controlled by the Government. Provisions of Article 311 under Part XIV of the Constitution do not apply to the employees of these Organisations. However, as these organisations can be brought within the definition of the term 'State' as described in Article 12 of the Constitution, the employees of these organisations are protected against the violation of their Fundamental Rights by the orders of their employer. The action of the employer can be challenged by the employees of these organisations on the grounds of arbitrariness, etc. These organisations also have their own sets of rules for processing the cases for conducting the disciplinary proceedings against their employees.

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

5. Although the CCS(CCA) Rules 1965 applies only to a limited number of employees in the Government, essentially these are the codification of the Principles of Natural Justice, which are required to be followed in any quasi-judicial proceeding. Even the Constitutional protections which are contained in Part XIV of the Constitutions are the codification of the above Principles. Hence, the procedures which are followed in most of the Government and semi-governmental organisations are more or less similar.

CONSTITUTIONAL PROVISIONS RELATING TO DISICPLINARY PROCEEDINGS

6. 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 to public services or posts 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 in respect of Central Government employees. CCS(CCA) Rules 1965 as well as several other service rules have been framed under the proviso to Article 309 of the Constitution.

7. **Article 310** of the Constitution contains what is known as the '*Pleasure Doctrine*'. It provides that the term of appointment of a person to a civil service of Union or that of a state or to defence services or to an All India Services or to posts connected with these services shall depend upon the pleasure of the President or

the Governor as the case may be . 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.

8. 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 or above the rank to the one who appointed him to the service. If the penalty of dismissal or removal from service is imposed by an authority that is lower in rank than the Appointing Authority, the same will be unconstitutional. The following are some of the practical difficulties which may arise in complying with this provision:

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

(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 decentralization of powers, the power for making appointment to the same grade is presently vested in a lower level officer. Is there any restriction on the exercise of the power of dismissal by the lower level officer?

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

The answers to these questions are contained in the provisions of the statutory rules which have been framed under Article 309 and a number of decisions of the Courts.

1. The second protection granted by Clause 2 of the Article 311 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.

9. Here information of the charges would mean and include the requirement of delivery of a written charge sheet in the language and composition that the suspected public servant can understand, specificity of the charges proposed to be leveled, i.e. clearly indicating the “Who” “What” “When” and “How” about the charges. A vague charge-sheet giving general information such as “always” “never” etc. does not convey the “information” as mandated under the Constitution.

11. 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

12. 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.

13. 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.

14. The provision mentioned at para 11(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. Conducting a departmental inquiry after the employee has been held guilty in a criminal case would be an exercise in futility. Hence the power granted by the Second Proviso to Article 311 may be availed and appropriate penalty may be imposed on the employee. It must, however, be noted that this provision only grants a power to the disciplinary authority to impose the penalty without inquiry when the employee has been convicted in a criminal case. It is not mandatory for the disciplinary authority to dismiss the employee whenever he has been convicted in a criminal case. The authority concerned will have to go thorough the judgment and take a decision depending upon the circumstances of the case.

15. Another occasion when the disciplinary authority may impose penalty on the employee without conducting any inquiry is when, the disciplinary authority, is satisfied, for reasons to be recorded, that it is not reasonably practicable to hold an inquiry. There are two conditions for invoking this provision viz. firstly, the disciplinary authority must be satisfied that it is not reasonably practicable to hold inquiry in a particular case and secondly, the authority must record the reasons for his decision. Although the constitution does not require the communication of the reasons in the penalty order, it has been recommended in the judgements of the Supreme Court that it is desirable to communicate the reasons in the 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.

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

17. 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.

PRELIMINARY INVESTIGATION STAGE

18. 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.

19. Information relating to 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 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.

20. 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 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.

21. 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.

22. 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.

23. 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. Members of All-India Services serving in connection with the affairs of the Union and Group 'A' officers of the Central Government; 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 belong to Category A for this purpose.

PENALTIES

24. Penalties that can be imposed on the Government Servant have been classified as Major and Minor Penalties. As per **Rule 11** of the CCA Rules, the competent authority may, for good and sufficient reasons, impose on a Government Servant any of the following penalties:

Penalties

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-sources 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:-

a) 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;

b) 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;

c) 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;

d) 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;

e) 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;

f) 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;

g) compulsory retirement of a Government servant in accordance with the provisions relating to his superannuation or retirement;

h) 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

(b) 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.

25. The Rule does not provide as to which penalty may be imposed for which misconduct. This aspect has been left to the discretion of the disciplinary authority.

MINOR PENALTY PROCEEDINGS

26. Minor penalties are less severe as compared to the Major penalties. The authority competent to impose these penalties may be lower than the Appointing Authority. Besides, ordinarily Minor penalties can be imposed without conducting an oral inquiry.

27. The procedure for imposing minor penalty is laid down in **Rule 16** of CCS (CCA) Rules 1965. Once a decision has been taken by the disciplinary authority to initiate minor penalty proceedings against an employee, a memorandum is issued to the employee communicating the proposal to take action against him. This memorandum is accompanied by a statement of imputations of misconduct or misbehaviour, giving him about 10 days' time for submitting his reply. In case the Government Servant desires to peruse some documents for preparing his reply, the same may be considered on merit. On receipt of his reply, or if no reply is received on expiry of the prescribed date, the competent authority will take a decision on the basis of available information. The findings of the disciplinary authority will be recorded in file and an appropriate order will be served on the Government servant concerned. If it is decided, as a result of such examination, to exonerate the Government servant, an order to that effect will be issued.

28. There may be circumstances where even for the imposition of minor penalty detailed oral hearing may be conducted. Such cases broadly fall under the following two categories:

a) **Optional:** Cases wherein the disciplinary authority may feel that in the circumstances of the case it is appropriate to hold an oral inquiry. The disciplinary authority may suo motto decide that in a particular case, oral inquiry may be held to ascertain as to whether the charges are proved. Alternatively, the decision may be taken based on the request of the concerned official. In any case, the final decision will be as per the discretion of the disciplinary authority. Cases involving oral evidence will normally call for oral hearing.

b) **Obligatory:** Where, the disciplinary authority, after considering the reply of the Government servant, proposes to impose the penalty of withholding of increment, under any one of the following circumstances, an oral inquiry shall invariably be held:

   i) withholding of increment for a period exceeding three years,
   ii) withholding of increment for any period with cumulative effect

iii) withholding of increment which is likely to adversely affect the pension of the Government servant,

29. Generally there will be a tendency to initiate the proceedings for major penalty so that the options can be kept open, because, on conclusion of the major penalty proceedings, minor penalty can also be imposed. This tendency should be avoided for two reasons. Firstly, if the gravity of the misconduct indicates that the ends of justice will be met through a minor penalty, initiation of major penalty proceedings will create unnecessary tension for the employee concerned and hence it will be unfair to him. Secondly, minor penalty proceedings can be completed expeditiously. Imposition of the penalty soon after the misconduct is always effective and desirable.

MAJOR PENALTY PROCEEDINGS

30. Procedure for imposition of Major penalty is laid down in rule 14 of the CCS (CCA) Rules. Normally, a Major penalty can be imposed only by the Appointing Authority.

Charge Sheet

31. Before imposition of major penalty, the disciplinary authority is required to prepare charge sheet which will have a memorandum with the following four annexures:

(a) **Annexure-I** - Articles of charge
(b) **Annexure-II** - Statement of imputations of misconduct or misbehaviour
(c) **Annexure-III** - List of documents by which the articles of charge are proposed to be sustained
(d) **Annexure-IV** - List of witnesses through whom the charges are proposed to be proved

32. It must be ensured that the charges are clear and unambiguous. The charged official will be able to defend himself only if he knows what exactly the allegation against him is. Hence vagueness of charge is likely to invalidate the proceedings. Articles of charge as mentioned in **Annexure-I** is the essence of the misconduct of the employee. It may be negligence, or insubordination or lack of integrity, etc. The details of the facts/transaction from which the charge emanates are known as the Statement of imputations of misconduct or misbehaviour. This

will be a detailed account and is given in **Annexure-II**. The evidence based on which the charge is proposed to be established may be documentary or oral. These are given in **Annexures-III** & **IV** of the charge sheet.

33. The charge sheet so prepared is served on the Govt. servant concerned with the instructions to file his written statement of defence. The covering memorandum is required to be signed by the disciplinary authority. In cases wherein the President is the disciplinary authority, the covering memorandum should be signed by an officer authorised to authenticate orders on behalf of the President. Normally, the copies of the documents and the statements of witnesses are supplied along with the Charge Sheet. If the documents are bulky and copies could not be given along with the Charge Sheet, the charged officer may be given an opportunity to inspect the same within a reasonable time, say 10 days.

34. Further course of action depends upon the response of the Charged Officer. Possible responses are that the Charge Officer may not respond to the Charge Sheet or may send a reply. Again, in his reply, the Charged Officer may admit the charge(s) or deny the same. While denying the Charge, the charged officer may make a bald denial or attempt to convince the disciplinary authority. The disciplinary authority has the following options:

(a) In case of unconditional and unambiguous acceptance of the charges, the disciplinary authority may pass orders for imposing suitable penalty.

(b) In cases of conditional denial or denial without any convincing reason, or in cases wherein the Charged Officer has not submitted the written statement of defence, the disciplinary authority has to take further action for holding an inquiry for establishing the charges. In case the Charged Officer has admitted some of the charges unconditionally and has refuted others, the disciplinary authority will order inquiry only in respect of the charges which have not been admitted by the Charge Officer.

(c) It is also possible that the Charged Officer may, in his written statement of defence, give a convincing reply to the allegations against him. In such cases the disciplinary authority may close the case and pass orders accordingly.

Inquiry

35. If, on examination of the written statement of the Charged Officer, or in cases wherein he has not filed any written statement within the prescribed time,

the disciplinary authority initiates action for conducting an inquiry for establishing the charges. He will appoint an Inquiry Officer(IO) and a Presenting Officer (PO). As per CCS (CCA) Rules, the Inquiry Officer/ Presenting Officer can be a serving Govt. Servant or a retired one. The Presenting Officer may be a legal practitioner. Copies of the Charge sheet and the accompanying documents are sent to the Inquiry Officer and the Presenting Officer.

36. Inquiry Officer, on receipt of the order of appointment will examine whether the requisite documents of the case have been sent. The role of Inquiry Officer is to conduct an inquiry in accordance with the provisions of Rule 14 of the CCA Rules as well as the Principles of Natural Justice and to give a finding as to whether the charges are proved. Presenting Officer's role is akin to that of a public prosecutor. His endeavor will be to establish the charges by leading evidence on behalf of the disciplinary authority. While the Inquiry Officer is required to be impartial to the case, there is no such requirement in respect of the Presenting Officer. While appointing the Inquiry Officer, it must be ensured that he is higher in rank to the Charged Officer and does not have any interest or preconceived ideas about the case. As regards the Presenting Officer, he is lower in rank as compared to the Inquiry Officer.

37. The Inquiry Officer is required to maintain a record of the progress of the case in the form of *Daily Order Sheets*. A daily order sheet is a brief narration of the day's happenings in the Inquiry. Whenever there is a progress in the case, the Inquiry Officer is expected to prepare a daily order sheet. On the date of receipt of the appointment order as Inquiry Officer, he will make his first daily order sheet indicating the fact of his appointment. Similarly during the progress of the case also he will keep on making daily order sheets, indicating progress; such as, taking over of documents, examination of witnesses, receipt of a request from the Charged Officer for production of additional documents etc.

38. The first perceptible action of the Inquiry Officer will be writing to the Charged Officer, with a copy to the Presenting Officer to appear before him on the date, time and venue prescribed by him for the Inquiry. Generally, the proceedings before the Inquiry Officer is divided into two phases viz. Preliminary Hearing and Regular Hearing. Inspection of listed documents, ascertaining the documents and witnesses required by the Charged Officer, etc. are done during the Preliminary Hearing. During Regular Hearing, examination of witnesses is carried out.

39. The Charged Officer is entitled to have the assistance of another officer for the purpose of defence. This person is known as Defence Assistant. The

Defence Assistant may be a serving or retired Government Servant. In case 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 is required to obtain permission from the disciplinary authority for engaging a legal practitioner as a Defence Assistant depending upon the facts and circumstances of the case. As regards the request of the Charged Officer for engagement of a Defence Assistant from a station other than the one where the inquiry is being conducted, the Inquiry Officer will have to take a decision. Another important aspect of the Inquiry is that if the Charged Officer has reasons to fear that the Inquiry Officer is biased against him, he is at liberty to make a representation to the Disciplinary Authority for change of Inquiry Officer. When a representation of this nature is pending disposal, the Inquiry Officer is expected to stay the proceedings.

40. In the first hearing, known as the preliminary hearing, the Inquiry Officer will question the Charged Officer as to whether he has received the Charge Sheet, understood its contents and admits the charges. In case, the Charged Officer admits the charges unconditionally at this stage, the same is recorded and the finding of guilt is sent to the disciplinary authority duly signed by the Charge Officer. In most of the cases, the Charged Officer denies the charges. Hence the Inquiry Officer will proceed with further inquiry. On denial of the charges by the Charged Officer, the Inquiry Officer will fix a schedule for inspection of the original documents listed in Annexure – III of the Charge Sheet. This may be conducted at a date, time and venue suitable to the Presenting Officer and the Charged Officer. The Inquiry Officer need not be present during the inspection of documents. After fixing the schedule for inspection of the original document, the Inquiry Officer asks the Charged Officer to submit the list of documents and the witnesses required for the purpose of his defence. The Inquiry Officer, on examination of this request may allow such of the documents and witnesses, which in his opinion are relevant for the purpose of defence. The Inquiry Officer will write to the custodian of the relevant documents for making the same available to enable the Charged Officer to make his defence.

41. After the Inspection of the documents, the Presenting Officer and the Charged Officer will report to the Inquiry Officer on a date and time fixed by the Inquiry Officer. The Inquiry officer will ascertain the outcome of the inspection i.e. whether the Charged Officer disputes the genuineness of any of the documents. The documents which have been admitted by the Charged Officer will be taken on record by the Inquiry Officer marking them as SE-1, SE-2, etc. (SE: State Exhibit).

Thereafter, the oral examination on behalf of the state will be led by the Presenting Officer. This phase is known as Regular Hearing.

42. Oral evidence may be led by both the parties. Oral evidence called on behalf of the disciplinary authority is known as State Witness (SW) and the oral evidence called on behalf of the Charged Officer is known as Defence Witness (DW). A witness will be subjected to three stages of examination. Firstly, the examination -in - chief will be conducted by the party who calls the witness. Thereafter, the witness will be subjected to cross examination carried out by the opposite party. Finally, the party who called the witness is allowed to carry out re-examination. Thus the State witness will be examined-in–chief by the Presenting Officer, cross examined by the Charged Officer/Defence Assistant and finally re-examined by the Presenting Officer. Similarly, the Defence Witnesses will be examined–in–Chief by the Charged Officer/ Defence Assistant, cross examined by the Presenting Officer and re-examined by the Charged Officer/Defence Assistant. The depositions of the witness are noted down by the Inquiry Officer (with stenographic assistance) and the recorded statements are got signed by the parties present and the witness himself. The recording may be in narrative form or question answer form, depending upon the nature of the examination of the witness. It may be kept in mind that the examination, cross-examination etc. of DW will start only on completion of the same with SW.

43. On conclusion of the evidence on behalf of the disciplinary authority, the Inquiry Officer will ask the Charged Officer to state his defence and lead evidence. He will also take on record, the documents which, the charged officer may wish to rely upon and mark them as DE-1, DE-2 etc (DE-Defence Exhibit). Thereafter, evidence on behalf of the Charged Officer is led. The Charged Officer has an option to appear as his own witness. In such a case, he will have to face the cross examination of the Presenting Officer. When the evidence for both the parties is over, the Inquiry Officer will question the Charged Officer generally of the circumstances appearing against him.

44. After bringing the facts on records in the form of documentary evidence or through oral evidence, the parties will have to convince the Inquiry Officer as to whether the charges are proved or not. The Presenting Officer will have to convince the Inquiry Officer that on the basis of the facts presented in the inquiry, there are reasons to believe that the charges may be held as proved. Similarly, the Charged Officer will try to convince the Inquiry Officer that on the basis of the information submitted during the inquiry, the charges cannot be held as proved. This process of convincing the Inquiry Officer is carried out either

through oral arguments or submission of written briefs. Generally, the parties prefer to submit written briefs. The Charged Officer has an option to finalise his brief on perusal of the brief of the Presenting Officer. On conclusion of the deposition of the witnesses for both sides, the Inquiry Officer will direct the Presenting Officer to submit his written brief within a reasonable time say 10 days, with a copy to the Charged Officer. The Charged Officer will be directed to submit his brief within a suitable time thereafter.

45. On receipt of the written briefs of the parties, the Inquiry Officer is required to make his Inquiry Report. The report will contain the background of the case, details of the hearings held, the evidence adduced in the inquiry, contentions of the respective parties, an objective analysis of the evidence and finally the conclusion, together with the reasons therefor, of the Inquiry Officer as to whether the charges are proved or not. Copies of the report along with other records of the case such as the original documents taken on record, statements of witnesses during the inquiry, daily order sheets, etc. will be sent by the Inquiry Officer to the disciplinary authority.

Action after Inquiry

46. The following courses of action are open to the disciplinary authority on receipt of the Inquiry officer's report:

(a) If it is observed from the report that the Inquiry officer has deviated from the statutory provisions or the Principles of Natural Justice, the disciplinary authority may refer the case back to the Inquiry Officer for removal of the anomaly. *E.g. If a document requested by the Charged Officer was not provided, which in the opinion of the disciplinary authority may amount to denial of opportunity of defence to the Charged Officer, the disciplinary authority may direct the inquiry Officer to provide the same to the Charged Officer and continue the inquiry.*
(b) If the disciplinary authority is not in agreement with the findings of the Inquiry Officer, he may record his reasons for disagreement and proceed accordingly. In case the Inquiry Officer has held the Charged Officer guilty and the disciplinary authority, on the basis of the records of the case comes to the conclusion that the Charged Officer is not guilty, the case may be closed and an order passed to that effect.
(c) If the Inquiry Officer has held the Charged Officer not guilty and the disciplinary authority comes to the conclusion that the Charged Officer is guilty, the report of the Inquiry Officer together with the note of disagreement of the disciplinary authority is sent to the charged officer and he is allowed to make a

representation against the same. On receipt of the reply from the Charged Officer, final orders are passed.

(d) In case the disciplinary authority is in agreement with the Inquiry Officer, depending upon the findings of the Inquiry Officer, the case is processed. i.e. if the finding is to the effect of not guilty, the case is closed and appropriate order is passed. Alternatively, a copy of the Inquiry report is sent to the Charged Officer and he is allowed an opportunity to make representation. On receipt of the reply of the Charged Officer, final orders are passed taking the contents of the representation into account.

47. In cases falling within the purview of the CVC, the matter is referred to the Commission along with the documents of the case and the second stage advice obtained. Second stage advice of the CVC may not be required in the cases where consultation with the UPSC is mandatory under the rules. Consultation with UPSC, where necessary is also carried out. The Disciplinary Authority shall forward or cause to be forwarded a copy of advice of the Commission to the Government Servant, who shall be required to submit, if he/she so desires, written representation or submission on the advice of the Commission, to the Disciplinary Authority within fifteen days. The Disciplinary Authority will consider the representation/submission before passing the final orders.

48. An employee who has been penalised in the above manner has certain departmental remedies by way of Appeal, Revision and Review.

49. In case, he is still aggrieved, he has the option to seek redressal from judicial fora.

****