

Through e-mail

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Government of India
Ministry of Personnel, P.G. & Pensions
Department of Personnel & Training
North Block, New Delhi – 110 001
Dated: - 08.06.2023

To
Chief Secretaries of All States/UTs

Subject: Compendium on Vigilance and Disciplinary Matters against AIS officers -reg.

Sir/Madam,

I am directed to enclose herewith a copy of Compendium prepared by ISTM on Vigilance and Disciplinary Matters (soft copy) against AIS officers with the request that guidance/help of the Compendium may be taken while dealing with the Vigilance and Disciplinary matters against AIS officer.

Yours faithfully,


(Surya Narayan Jha)

Under Secretary to the Govt. of India
Tele. No.- 23092298

Copy to:

1. NIC, DoPT, North Block, New Delhi- with the request to upload the Compendium on the website of this Department.

COMPENDIUM ON VIGILANCE & DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

P A R T - 1 & 2



GOVERNMENT OF INDIA

INSTITUTE OF SECRETARIATE TRAINING & MANAGEMENT

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COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

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Disclaimer: Though every care has been taken to ensure the accuracy and correctness of the contents in this Compendium, yet, in case the readers come across any errors or omissions, they may kindly bring the same to the notice of the Institute of Secretariat Training and Management (ISTM) through email at istm@nic.in.

Any comments or suggestions for the improvement of this handbook will be gratefully appreciated.

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS**FOREWORD**

Disciplinary cases against All India Services Officers are handled at the State Governments level as well as at the Central Government level. Many a times, the cases are required to be processed in the State Government concerned, thereafter, these are submitted to the Central Government for decision by the Competent Disciplinary Authority. There are several instructions issued by Department of Personnel and Training, Central Vigilance Commission etc. for processing of such cases. A requirement has been felt to prepare a compendium consisting of the rule position and all the relevant instructions issued from time to time by DoPT and CVC.

The Institute of Secretariat Training and Management (ISTM), New Delhi was given the task to bring out this Compendium on Vigilance and Disciplinary cases against All India Services Officers.

I am very happy that ISTM, in collaboration with the officers of DoPT, has prepared this Compendium, which will be very useful for Inquiry Officers and Disciplinary Authorities handling cases against All India Service Officers. I am sure that this Compendium will help in reducing the pendency as well as the time taken in processing of the disciplinary cases against All India Services Officers.

(S. Radha Chauhan)
Secretary, DoPT

PART - 1

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

CHAPTER-1**OVERVIEW OF VIGILANCE AND DISCIPLINARY PROCEEDINGS****Introduction**

1.1 Life would be excellent, if everyone does what he/she is expected to do and no one does what he/she is prohibited from doing. However, this ideal situation is far from the practical reality. We do come across persons doing things which are prohibited and failing to perform prescribed duties. Tackling such non-conforming behaviour by the employees is one of the major challenges before Human Resource Management branch of every organization. Many tools are available for fine tuning the individual behaviour and performance with the organizational goals. Various sub-systems under HRD such as counselling, mentoring, performance appraisal, compensation planning, recruitment policy, career progression policy, training, reward and punishment, etc. basically aim to optimize the output of the human resources to achieve organizational goals.

1.2 Depending upon its severity and type, non-conforming behaviour may acquire the shape and structure of misconduct. Lack of devotion to duty, lack of integrity, disobedience, non-observance of the prescribed rules, etc. are some of the common instances of misconduct. Embezzlement, misappropriation, demand or acceptance of bribe, tampering of records, self-enrichment at the cost of the organization, abuse of official position for personal gains, forgery, cheating, possession of assets disproportionate to the source of income, etc. constitutes misconduct of more severe nature.

1.3 For handling misconduct, choice of the appropriate tool among the multifarious options available is itself a challenge and calls for considerable caution and vision. Choice of tool depends upon several factors such as the severity of the misconduct, impact on the organization, profile and past conduct of the individual, circumstances under which the incident has occurred, anticipated outcome after application of the remedial measure, etc. Whatever be the tool selected, the ultimate purpose of these tools should not be lost sight of viz. "optimization of the output of the human resources of the organization"

1.4 Handling various tools under HRD mentioned above, calls for diverse skills. Volumes of information and guidelines are available for employing each of the tools under HRD. In this compendium, we are concerned with the updating and upgradation of the skills for handling the Reward and Punishment system – or more specifically the

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punishment system. Taking punitive action calls for a higher degree of skills because of a variety of reasons, some of which are:

- (a) Considerable number of organisations and functionaries, such as the Administrative Vigilance Division, Central/State Vigilance Commission, Chief Vigilance Officer, Departmental Vigilance Unit, Union/State Public Service Commission, Disciplinary Authority, Inquiring Authority, Presenting Officer, etc. are involved in the process.
- (b) Stakes are high- *MV Bijlani Vs. Union of India*¹ is a classic case wherein the Govt. had to pay 50% of the back wages for 23 years from the date of dismissal to the date of Judgment by the Hon'ble Supreme Court.
- (c) Every action sends a message to the members of the organization and often to the public as well.
- (d) Action taken are subject to judicial scrutiny and any omission and/or commission during action, become, a matter of public debate.
- (e) Action amounts to tight rope walking – an approach more lenient than optimum may encourage indiscipline; an approach more rigid than optimum may create a fear psychosis in the establishment and affect performance.
- (f) Knowledge and capability of correct interpretation of complex statutory provisions are required – including Constitution of India, Acts, Rules, Principles of Natural Justice & relevant case laws, etc.
- (g) Variety of skills are required – technical skills, human skills and conceptual skills.

1.5 Above stated complexities highlight the need for a systematic and cautious approach in handling the disciplinary matters of errant employees. Successful handling of organizational misconduct calls for several Behavioural factors, some of which are as under:

Knowledge

- (a) Relevant Constitutional provisions which lay down the boundary limits of the power of the organization and basic rights of the employees.
- (b) Specific statutory provisions in the form of legislation and delegated legislation which govern the service conditions under the State.
- (c) Principles of Natural Justice which supplement codified law.
- (d) Judicial pronouncements interpreting various provisions.
- (e) Procedural guidelines issued by various agencies involved in the matter.

¹(2006) 5 SCC 88

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Skills

- (a) Eliciting information through interviewing and examination of documents.
- (b) Examination, cross examination and re-examination of witnesses.
- (c) Culling out truth from the conflicting versions of the contesting parties.
- (d) Data analysis.
- (e) Accurate and Objective recording of the proceedings.
- (f) Report writing skills.

Attitude

- (a) Resisting the temptation to jump into premature conclusions.
- (b) Being and appearing neutral and impartial.
- (c) Keeping cool amidst provocation.
- (d) Being thoroughly objective, overcoming personal prejudices.
- (e) Being just, fair and reasonable.

1.6 This compendium aims to facilitate updating and upgradation of the above-mentioned traits. Before proceeding further, it becomes necessary to have a look at the major types of misconduct that prevail in the organisations. Cases of errand behaviour in the organization broadly fall under two heads viz. (i) **cases having vigilance angle** and (ii) **cases not having vigilance angle**. Distinction between these two types of cases is clearly explained in the Vigilance Manual published by the Central Vigilance Commission. We will have a brief discussion later in this chapter on the distinguishing features between these two types of cases. For the time being, it is sufficient to know that cases having Vigilance angle may have some additional steps and involvement of additional agencies/functionaries as compared to those which do not have vigilance angle.

1.7 Sexual harassment of women at workplace is also a specific type of misconduct. A Separate legislation has been enacted as **Prevention of Sexual Harassment of Women at Workplace Act, 2013 (POSH Act)** for handling such cases. Disciplinary proceedings relating to this type of misconduct needs to be handled taking care of the provisions of the POSH Act as well as the service Rules. We have a separate chapter in this compendium on how to handle such cases.

1.8 Statutory provisions that governs disciplinary procedures have been enacted under the powers flowing from the Constitution. Besides, some provisions of the Constitution have a direct bearing on the conduct of disciplinary proceedings. Accordingly, updating of the knowledge of constitutional provisions on the subject is the first step in the process.

Constitutional and Statutory Provisions

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1.9 Constitutional provisions having a bearing on disciplinary proceedings broadly fall under two heads viz. Part III i.e., Fundamental Rights and Part XIV i.e., Services under the Union and the States.

1.10 Three provisions of Part III of the Constitution of India are relevant in the matter of Disciplinary Proceedings. Firstly, Article 13 of the Constitution requires that no law shall take away or abridge or contravene any of the Fundamental Rights guaranteed under Part III of the Constitution. It is also noteworthy that under clause 13 (3) (a) "*law*" includes any Ordinance, order, byelaw, rule, regulation, notification, custom or usage having in the territory of India the force of law;". It is evident from the plain language of Article 13 that provisions of Part III of the Constitution need to be complied with while enacting any legislation or framing subordinate legislation.

1.11 Secondly Article 14 of the Constitution provides Right to equality and equal protection of the laws. Hon'ble Supreme Court through several decisions including a few from Constitutional Bench² has held that "*Article 14 strikes, at arbitrariness in State action and ensures fairness and equality of treatment.*"³ Thus, it needs to be ensured that the disciplinary proceedings are free from arbitrariness. Scope of the term arbitrariness is explained in the following passage:

*"The expression 'arbitrarily' means in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone."*⁴

1.12 Another provision in Part III of the Constitution having a bearing on the disciplinary proceedings is Article 21, which guarantees the right to life and personal liberty. The same is extracted hereunder for ease of reference:

***"Article-21. Protection of life and personal liberty-* No person shall be deprived of his life or personal liberty except according to procedure established by law."**

1.13 It has been held that the above right is not confined to merely the right to breathe and exist. Scope and import of Article 21 was eloquently explained by the Hon'ble Apex Court in the following terms:

² E.P. Royappa v. State of Tamil Nadu (1974) 4 SCC 3.

³ Maneka Gandhi v. Union of India (1978) 1 SCC 248

⁴ Sharma Transport V. Government of A.P (2002) 2 SCC 188.

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*"But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes right to live with human dignity and all that goes along with it viz., the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about the mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must in any view of the matter, include a right to the necessities of life and the right to carry on such functions and activities as constitute the bare minimum expression of the human self"*⁵

It may be recalled that in *Maneka Gandhi v. Union of India* (1978) 1 SCC 248, (supra) it was held that the right to go abroad is covered under Article 21. In the light of these rulings, it is indisputable that deprivation of livelihood is tantamount to interfering with the right to life. Thus, the conditions precedent as prescribed in Article 21 viz. *according to procedure established by law* applies in all cases of disciplinary proceedings leading to cessation of service. It is also relevant that as stated in *Maneka Gandhi* case, *"The procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary."*

1.14 The above procedural restraints emanating from Part III of the Constitution are applicable to all the Ministries, Departments and attached sub-ordinate offices of the Union as well as the State and Union Territories. In addition, they apply to all other instrumentalities of the State such as the PSEs and Autonomous/statutory Bodies under the Government. Tests for determining whether an organization is an instrumentality of the State were initially laid down in *R. D. Shetty v. The International Airport Authority of India & Ors*⁶. and were later listed in *Ajay Hasia Etc. vs Khalid Mujib Sehravardi & Ors. Etc.*⁷ as under:

"1. One thing is clear that if the entire share capital of the Corporation is held by Government it would go a long way towards indicating that the Corporation is an instrumentality or agency of Government.

2. Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

3. It may also be a relevant factor whether the corporation enjoys monopoly status which is the State conferred or State protected.

⁵*Francis C Mullin v. Administrator, Union Territory of Delhi*, [1981] 2 S.C.R

⁶ [1979]1 S.C.R.1042

⁷ 1981 AIR 487, 1981 SCR (2) 79

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4. *Existence of "deep and pervasive State control may afford an indication that the corporation is a state agency or instrumentality".*

5. *If the functions of the Corporation of public importance and closely related to government functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.*

6. *"Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government."*

1.15 As stated above, Part XIV of the Constitution is on Services under the Union and the States. Relevant provisions of the Constitution which relate to dealing with disciplinary proceedings are extracted in Part II of the Compendium and may be referred to where necessary. Succeeding paragraphs contain a brief discussion on their scope and import.

1.16 Article 309 is an enabling provision which empowers the Union Parliament and the State Legislatures to enact Acts *to regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State.* The same Article also imposes a limit on the power, i.e., *"Subject to the provisions of this Constitution"* This makes it clear that if any law enacted by the Parliament or the State legislature is not in conformity with the provisions of the Constitution, the same would be invalid to that extent.

1.17 All-India Services Act, 1951 (hereinafter "*the 1951 Act*") is one such Act enacted under the above provisions. Section 3 of the above Act empowers the Central Government to make rules '*for the regulation of recruitment, and the conditions of service of persons appointed to an All-India Service*'. The All India Services (Discipline and Appeal) Rules, 1969 (hereinafter "*the 1969 Rules*") is one of the Rules made under the above provision. It is also relevant to note that most other services in the country are regulated by Rules framed by the Executive under the powers delegated vide the Proviso to Article 309.

1.18 Article 310 contains the Pleasure Doctrine which is subject only to the express provisions of the Constitution. In brief, it implies that except as expressly provided in the Constitution, the tenure of the Government official is co-terminus with the pleasure of the President or the Governor, as the case may be. While the tenure of some high-level functionaries is protected by specific provisions in the Constitution, the tenure of other Civil Servants is protected by the immediately succeeding provision viz. Article 311.

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1.19 Article 311 provides two protections subject to three exceptions. This protection is available to members of the civil service and holders of the civil posts in the Union and the States as well as the members of the All India Services. First and most important point that looms large is that this protection is NOT available to the members of the defence services and holders of defence posts. It has been held by the Hon'ble Supreme Court in a series of decisions that the civilians who are paid from Defence Service Estimates are also excluded from the protection under Article 311⁸. Besides, the employees of the Government corporations and Autonomous bodies created and controlled by the Government are also not entitled for the protection under Article 311⁹ - although they are entitled for the protection under Part III of the Constitution.

1.20 The protections offered by Article 311 are of the nature of answers to the questions 'Who?' and 'How?'. Clause (1) of the Article provides who can dismiss or remove a civilian employee from service. Article 311 (1) prescribes that power of dismissal and removal cannot be exercised by an authority subordinate to that by which one was appointed. Thus, what is significant is which authority appointed the Government servant – not which authority was competent to appoint. Further, the restriction is only on a *subordinate* authority exercising the power. Power of dismissal/removal need not be exercised by the same authority. It may be by the equivalent or higher authority.

1.21 Clause (2) of Article 311 prescribes the mode of dismissal or removal or reduction of rank of the Government servant. Thus, it answers the question "How?". As is the case with Article 311 (1) this protection is not extended to the defence employees including defence civilians. In addition to the above, protection under Article 311 (2) is available subject to two conditions viz. (i) Right to post and (ii) visitation of evil consequences. Therefore, the termination of services of a temporary employee under the terms of employment was upheld by the Apex Court citing catena of earlier decisions¹⁰.

1.22 Article 311 (2) mandates an inquiry before dismissal, removal from service or reduction in rank – in respect of those employees who are entitled for the protection under this clause. Two broad guidelines for conduct of inquiry are also mentioned in the Article itself viz. (i) Informing the employee about the charges and (ii) providing a reasonable opportunity of being heard in respect of those charges. It has been clarified by the Hon'ble Supreme Court in several decisions that the protection under this clause is available only when dismissal, removal from service or reduction in rank is imposed as a punitive measure. For example, compulsory retirement under the service

⁸ Union of India Vs. K S Subramanian 1989 AIR 662; 1988 SCR Supl. (3)1074; 1989 SCC Supl. (1) 331; JT 1988 (4) 681; 1988 SCALE (2)1546

⁹ Ajay Hasia (Supra)

¹⁰ State of Uttar Pradesh and Anr Vs. Kaushal Kishore Shukla, 1991 SCR (1) 29; 1991 SCC (1) 691; JT 1991 (1) 108; 1991 SCALE (1)15

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rules – on attaining a certain age or on completion of certain number of years of service will not attract the provisions of Article 311 (2)¹¹.

1.23 Article 311 (2) has been perceived to be a codified form of the *Audi Alteram Partem* Rule of the Principle of Natural Justice, which means ‘*Hear the other side*’ or ‘*No one should be condemned unheard*’. The following observation of the Hon’ble Supreme Court will be useful in understanding the scope of the Rule:

“Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them.”¹²

1.24 In effect, the rule implies that an accused person has right to:

- (a) Know the charges
- (b) Inspect the records
- (c) Know the evidence against him/her
- (d) Cross-examine the witnesses against him/her
- (e) Lead evidence in support of his/her case
- (f) Assistance – not necessarily legal

1.25 It may be seen that the inquiry procedure laid down in the 1969 Rules, meets all the above requirements specified in the Constitution as clarified by the Hon’ble Supreme Court in various decisions.

1.26 As held by the Apex Court, the Principles of Natural Justice can be exempt by specific provisions of Law or by necessary implications¹³. Second Proviso to Article 311 (2) states, “*this clause shall not apply*” and explicitly exempts the application of 311(2) and thereby the Principles of Natural Justice under three circumstances. These three circumstances mentioned in the Second Proviso to Article 311 (2) have been incorporated in Rule 14 of the 1969 Rules. Although, dismissal or removal or reduction in rank without inquiry may appear to be severe and unjustified on the face of it, the three extra-ordinary circumstances enumerated in Rule 14 of the 1969 Rules serve a salutary purpose. Procedure for taking punitive action dispensing with inquiry by

¹¹Shyam Lal Vs. State of Uttar Pradesh, 1954 AIR 369; 1955 SCR 26

¹²[Union of India v. T. R. Varma](#), AIR 1957 SC 882.

¹³ Union of India Vs. Tulsi Ram Patel, 1985 AIR 1416; 1985 SCR Supl. (2) 131; 1985 SCC (3) 398; 1985 SCALE (2)133

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invoking the powers under Rule 14, has been discussed in detail in Chapter 6 of this Compendium.

1.27 Another significant constitutional provision relating to disciplinary action is contained in Article 320 which enumerates the Functions of the Public Service Commissions. It may be seen from the extract of the Article in Part II of the Compendium that Article 320 (3) (c) mandates consultation with the Commissions '*on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;*' The above mandate is subject to the proviso under Article 320 (3) which empowers the President and the Governor to make "*regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted*".

Agencies involved

1.28 As stated above, one of the causes of complexity in conducting disciplinary proceedings is the involvement of considerable number of agencies and functionaries in processing such cases.

Central Vigilance Commission

1.29 Central Vigilance Commission (CVC) is the apex integrity institution of India, created through the Government of India Resolution of 11.02.1964 in pursuance of the recommendations made by the Committee on Prevention of Corruption which is popularly known as "*Santhanam Committee*". Subsequently, in compliance with the directions of the Hon'ble Supreme Court in the case of *Vineet Narain vs. Union of India [CWP 340-343 of 1993]*¹⁴ the Commission was accorded statutory status with effect from 25.08.1998 through "The Central Vigilance Commission Ordinance, 1998". In 2003, the CVC Bill was passed by both Houses of Parliament. The Central Vigilance Commission Act, 2003 (No.45 of 2003) came into effect from 11th September 2003 - the date on which the President gave assent.

1.30 The Act requires CVC to inquire or to cause inquiry or investigation into offences alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) by certain categories of public servants of the Central Government, Corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government. The Act also empowers the Commission to exercise superintendence over the functioning of the Central Bureau of Investigation (CBI), insofar as it relates to the investigation of

¹⁴ (1998) 1 SCC 226 /Dated 18 December 1997

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offences alleged to have been committed under the Prevention of Corruption Act, 1988. Under the Lokpal and Lokayuktas Act, 2017, CVC has been empowered to conduct preliminary inquiry into complaints referred by Lokpal in respect of officers and officials of Groups B, C & D, besides Group A officers.

1.31 Powers, Jurisdiction and functions of CVC and the functionaries therein are dealt with in detail in the Vigilance Manual which is revised from time to time. The latest manual at the time of compilation of this Compendium is of 2021. In addition, the Annual Reports of CVC also provide a wealth of information about the activities of CVC and give a fair idea of the prevailing vigilance climate.

1.32 Briefly, the CVC is involved in cases having 'Vigilance Angle' and relating to Category-A Officers which includes *Members of All-India Services serving in connection with the affairs of the Union and Group 'A' officers of the Central Government*; As seen above, cases involving corruption, bribery, etc. fall under the category of Vigilance cases. Cases of unauthorized absence, lack of punctuality, intemperate behaviour, etc. do not have a vigilance angle. Cases of delay, negligence, etc. may or may not have a vigilance angle depending upon the facts and circumstances of the case. In respect of the cases falling under the purview of CVC, the Commission must be consulted twice i.e., for the First Stage Advice while deciding the course of action on receipt of Preliminary Enquiry/Investigation Report (Chapter-2 of this Compendium) and for the Second Stage Advice regarding the quantum of penalty at the time of concluding the proceedings. Based on the recommendations of the Hota Committee (*Committee of Experts to review the procedure of Disciplinary/Vigilance Inquiries and recommend measures for their expeditious disposal*) Department of Personnel and Training, vide its letter No. 372/19/2011-AVD-III (Pt. I) dated 26th September 2011 has dispensed with second stage consultation with CVC in respect of cases where UPSC is consulted regarding the quantum of penalty. Second Stage Advice of CVC will be required only in those cases, where consultation with UPSC is not required.

Administrative Vigilance Division (AVD)

1.33 Administrative Vigilance Division (AVD) set up in the Ministry of Home Affairs, in August 1955, was the central agency to assume overall responsibility for anti-corruption measures. After the establishment of the Central Vigilance Commission, a good part of the erstwhile functions of AVD are now discharged by the Central Vigilance Commission. The Administrative Vigilance Division, presently a part of the Department of Personnel and Training in the Ministry of Personnel, Public Grievances & Pensions is now responsible for the formulation and implementation of policies of the Central Government in the field of vigilance, integrity in public services, anti-

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corruption and to provide guidance and coordination to Ministries / Departments of Government of India in matters requiring decisions of Government.

Chief Vigilance Officer (CVO)

1.34 Vigilance Manual deals at length with the procedure for appointment, tenure, powers and functions of the Chief Vigilance Officer. Briefly, it reads that 'CVO heads the Vigilance Division of an Organisation and acts as an advisor to the Chief Executive in all matters pertaining to vigilance. He is also the nodal officer of the Organisation for interaction with CVC and CBI. Vigilance functions to be performed by the CVO are of wide sweep and includes 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 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 improper practices and commission of misconducts, etc.

Public Service Commission

1.35 Union Public Service Commission and the State Public Service Commission plays a significant role in the conduct of disciplinary proceedings against Government officials. As stated above Article 320 (3) (c) mandates consultation with the Union/ State Commission. Detailed procedure developed by the UPSC in this regard is covered in Chapter 8 of this Compendium.

Procedure in Brief

1.36 The procedure commences with a '*complaint*', which is dealt with in detail in the succeeding chapter. Briefly, it is to be remembered that a complaint need not necessarily mean allegations against an official sent by his/her adversary. In vigilance parlance, complaint means source of information about a misconduct in the organization. This source may be a press clipping or an Inspection report or an Audit Para or a parliamentary debate or an innocuous representation whose author might not have intended it to be a complaint. It may be seen from the Annual Reports of the CVC, year after year, that many complaints, about sixty percent, do not result in punitive action. Either they are filed, or they lead to some administrative action. Therefore, the complaints should not be taken on face value and should be subjected to rigorous scrutiny. CVC guidelines as applicable at the time of preparation of this Compendium require that no action need to be taken on anonymous and pseudonymous complaints.

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1.37 With a view to check the veracity of complaints, they are subjected to Preliminary Investigation. Purpose and procedure of Preliminary Investigation are covered in detail in the next Chapter. Based on the outcome of Preliminary Investigation, if it is decided to initiate disciplinary proceedings, charge sheet is to be prepared – needless to add that in cases falling within the purview of CVC, first stage advice is to be taken based on the Preliminary Investigation Report. Next course of action after issue of charge sheet is decided depending upon the response from the Charged Officer - or the absence of it. One of the options may be to pursue with Inquiry.

1.38 Depending upon the outcome of the Inquiry, final action is to be taken where necessary, in consultation with the CVC or UPSC/State Public Service Commission. This is dealt with at length in the Chapter titled 'Action on Inquiry Report'. The employee aggrieved by the order of the disciplinary Authority imposing penalty has some departmental remedies by way of Appeal, Revision, Review and Memorial which are dealt with in Chapter 11 that follows.

Conclusion

1.39 Before taking recourse to the above procedure, it must be confirmed whether the employee could be dealt with other simple means viz. discharge simpliciter, in the case of a probationer, or by dispensing with inquiry under Rule 14 of AIS (D&A) Rules, 1969 etc.

1.40 Before concluding the overview, it would be appropriate to bring to the notice of the readers a touching observation from the Report of the Hota Committee of which a mention was made in an earlier para.

“139. The tragedy with the public service in India, of late, has been that in the absence of periodical crack-down on corruption by resort to Draconian measures, the Government Servants do nothing without a bribe; a still bigger tragedy would be, however, if, after such crack-down, they simply do nothing and play safe. The challenge to practitioners of public administration in the country at the higher levels is to provide a sense of confidence to members of the public service that bona fide acts of theirs, including acts of omission and commission in standing up to undue pressure, would not entail unsavoury consequences for them; at the same time, to convey that delinquent act of omission and commission sans bona fide would result in prompt and suitable punishment. It is our hope that some of our recommendations will help achieve this objective.”

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1.41 It is hoped that this Compendium will facilitate the updating and upgradation of the skills of tight rope walking which is required for discharging various functions during disciplinary proceedings.

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CHAPTER-2

COMPLAINTS & PRELIMINARY INVESTIGATION

In this chapter the following aspects are covered:

- i. Complaint and Complaint handling
- ii. Preliminary Investigation or Enquiry
- iii. Procedure for handling complaints
- iv. Format for Investigation Report
- v. Checklist for handling complaints

Complaint:

2.1 A complaint is a piece of statement or information containing details about offences alleged to have been committed under the PC Act, 1988, or malpractice/misconducts under Conduct Rules. In respect of AIS Officers, the malpractice/misconducts as specified in the All India Services (Conduct) Rules, 1968.

2.2 **Source of Complaints**¹⁵: Information about corruption, malpractice or misconduct on the part of AIS Officers may flow to the administrative authority, the Central Vigilance Commission, the CBI or the police authorities from any of the following or other sources:

- a) Complaints received from employees of the organisation or from 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 the 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, ACB, Lokayuktas, etc.

2.3 Information gathered from reports, returns, newspapers, etc. will be included under the term “complaint” and will be dealt with in the same way as letters of complaints. Information received verbally will be reduced to writing and dealt with

¹⁵ Para 3.1 of Vigilance Manual of CVC, 2021

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similarly. Information gathered in such a manner should be reduced to writing and registered in the Vigilance Complaints Register at a suitable stage.

Handling of Complaints¹⁶

2.4 No action is required to be taken on anonymous complaints, irrespective of the nature of allegations and such complaints need to be simply filed. Complaints containing vague allegations could also be filed without verification of identity of the complainant.

2.5 If a complaint contains verifiable allegations; the administrative Ministry/Department may take cognizance of such complaint with the approval of the competent authority to be designated by the Ministry/Department as per their distribution of work. In such cases, the complaint will be first sent to the complainant for owning/disowning. If no response is received from the complainant within 15 days of sending the complaint, a reminder will be sent. After waiting for 15 days after sending the reminder, if still nothing is heard, the said complaint may be filed as pseudonymous by the Ministry/Department.

2.6 Complaints against Secretaries to the Government of India will be referred to the Cabinet Secretariat for placing before the Group of Secretaries headed by the Cabinet Secretary/Secretary (Co-ordination) in the Cabinet Secretariat. Complaints against Secretaries to the Government of India, whether pseudonymous or otherwise, received by the Cabinet Secretariat or the CVC or the DOPT or the Prime Minister's Office, will be first scrutinised by the group headed by the Cabinet Secretary¹⁷. Complaints against officers, who do not hold the post of Secretary, but whose pay-scales are equivalent to that of Secretaries to Government of India (Secretary-equivalent position) and who are functioning under an administrative Ministry/Department (i.e., where there is an administrative superior to such officers) shall be looked into by the concerned Ministry/Department and the matter may be referred to Cabinet Secretariat (Group of Secretaries headed by Cabinet Secretary) only if it merits further action. This procedure is followed in the case of retired Secretaries also.

2.7 The members of the Group of Secretaries are as follows: -

(i) Cabinet Secretary, (ii) Principal Secretary to the Prime Minister, (iii) Secretary (Coordination) in the Cabinet Secretariat, (iv) Secretary DOPT, and (v) Secretary, CVC. Complaints against Secretaries to the Government of India, whether pseudonymous or otherwise, received by the Cabinet Secretariat or the CVC or the DOPT or the Prime Minister's Office, are firstly scrutinised by the group headed by the Cabinet Secretary. Any complaint received in CVC against Secretaries to Government

¹⁶ OM No.104/76/2011-AVD.I dated 18.10.2013

¹⁷ OM No. 104/100/2009-AVD.1 dated 14.01.2010, 08.03.2010 and 04.05.2011.

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of India and where an investigation report is to be sought by CVC, the same should be sought through Secretary, DoPT.

2.8 The group, after reviewing the complaints, would proceed as follows: -

- a) If there is no substance in the complaint or the complaint is frivolous in nature, the group would close the complaint and inform the relevant office from where the complaint was received.
- b) In case the preliminary scrutiny of the complaint indicates that there is some substance in it or there are verifiable allegations, the group could do one or more of the following: -
 - (i) Seek the comments of the Secretary concerned.
 - (ii) Call for the concerned file(s).
 - (iii) Call for the relevant records, including annual property returns, other reports etc.
- c) On receipt of appropriate inputs on the complaints, the group will then proceed in the following manner: -
 - (i) In case the records/comments indicate that there is no substance in the complaint, it will be closed.
 - (ii) If after scrutiny, it is felt that there is some substance in the complaint, a view would have to be taken by the group regarding the nature of the investigation called for and an appropriate recommendation made in this regard.
 - (iii) Thereafter, the recommendation would be submitted to the Disciplinary Authority, for action as deemed fit.

2.9 The group will also look into the complaints received by the CVC under the CVC Act or the Public Interest Disclosure Resolution and keep CVC informed of the action taken.

Complaints forwarded by CVC

2.10.1 Complaints can be filed against the members of All India Service with CVC. Complaint containing allegations of corruption will be got investigated by the CVC through CBI or CVO of the organisation concerned. CVC may also get a complaint inquired through its own officer¹⁸.

2.10.2 Complaints received by the CVC which are anonymous or pseudonymous or which do not contain any verifiable facts may be either filed or be sent to the Departments for necessary action. In case of the complaints so forwarded, the concerned CVO should decide action on such complaints within one month. In

¹⁸ CVC Circular No. 98/DSP/9 dated 15.12.2014

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case it is decided to investigate the complaint, the report has to be submitted to CVC within three months.¹⁹

2.10.3 In respect of complaints from “whistle-blowers” under the Public Interest Disclosure and Protection of Informer Resolution (PIDPIR), 2004 the Government of India has authorised the Commission, as the Designated Agency, to receive written complaints or disclosure on any allegation of corruption or of misuse of office by 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 and take action in accordance with the provision of the Resolution.²⁰

2.10.4 (a) The Chief Vigilance Officers of the Ministries or Departments of the Government of India are also authorised as the designated authority to receive written complaint or disclosure on any allegation of corruption or misuse of office by any employee of that Ministry or Department or of any corporation established by or under any Central Act, Government companies, societies or local authorities owned or controlled by the Central Government and falling under the jurisdiction of that Ministry or the Department.

(b) Either on the application of the complainant, or based on the information gathered, if the designated authority is of the opinion that either the complainant or the witnesses need protection, the designated authority, shall take up the matter with the Central Vigilance Commission, for issuing appropriate directions to the Government authorities concerned.

(c) The Central Vigilance Commission (CVC) shall supervise and monitor the complaints received by the designated authority.

(d) A report on PIDPI complaints including cases of alleged harassment / victimisation received by the Chief Vigilance Officers of the Ministries or Departments of the Government of India are required to be sent to the Commission by the CVOs of the Ministries/ Departments.²¹

Initial action on complaints by Departments²²

2.11.1 Every Vigilance Section / Unit will maintain 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 CVCs advice is required whereas category ‘B’ includes such employees against whom CVCs advice is not required. In case of

¹⁹ Para 3.4.3 (a) and (b) of Vigilance Manual, 2021 Edition

²⁰ Resolution No. 371/12/2002-AVD-III dated 21.04.2004, Para 3.3.1 (ii) of Vigilance Manual, 2021

²¹ Para 4.4 of Vigilance Manual, 2021

²² Para 3.5.1 of Vigilance Manual, 2021

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AIS officers, it would be entered in part for category 'A'. If a complaint involves both categories of employees, it should be shown against the higher category, i.e., Category 'A'.

2.11.2 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.

2.11.3 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 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".

Scrutiny of Complaints²³

2.12 Each complaint will be examined by the Chief Vigilance Officer to see whether there is any substance in the allegations made in it. Where the allegations are vague and general and prima facie unverifiable, the Chief Vigilance Officer may decide, with the approval of the Head of the 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 be required to verify the allegations to decide whether, or not, the officer concerned should be proceeded Departmentally or in a court of law or both.

Preliminary Enquiry or Investigation

2.13.1 **Preliminary Enquiry** is conducted for ascertaining and verifying the facts alleged in a complaint. It generally involves collection of documents and other evidence, obtaining statement of witnesses, their verification and scrutiny to bring out the truth. In common parlance, it is also referred to as Vigilance Investigation. Investigation into the criminal offence is conducted by CBI or a Police Officer under the Code of Criminal Procedure, 1973.

2.13.2 **CBI / ACB of UTs/Crime Branch of States:** As soon as a decision has been taken by the competent authority to investigate the allegations contained in a complaint, it will be necessary to decide whether the allegations should be enquired into Departmentally or whether a police investigation is necessary. As a rule, investigation into allegations of the types given below should be entrusted to the

²³ Para 3.5.2 of Vigilance Manual

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Central Bureau of Investigation or to the Anti-Corruption Branch in the Union Territories/Crime Branch of States:²⁴

- a) Allegations involving offences punishable under law which the Delhi Special Police Establishment are authorised to investigate, such as offences involving bribery, corruption, forgery, cheating, criminal breach of trust, falsification of records, etc.
- b) Possession of assets disproportionate to known sources of income.
- c) Cases in which the allegations are such that their truth cannot be ascertained without making inquiries from non-official persons; or those involving examination of non-Government records, books of accounts, etc.
- d) Other cases of a complicated nature requiring expert police investigation.

2.13.3 Local police: The cases in which the allegations are such as to indicate prima facie that a criminal offence has been committed but the offence is one for which the Delhi Special Police Establishment are not authorised to investigate, the case should be handed over to the local police authorities.

2.13.4 Departmental Agency: In cases where allegations relate to a misconduct other than an offence, or to a departmental irregularity or negligence, and the alleged facts are capable of verification or inquiry within the Department / Office, the inquiry / investigation should be made departmentally.

2.13.5 Consultation with CBI/ACB: In certain cases, the allegations may be of both types. In such cases, it should be decided in consultation with the Central Bureau of Investigation/ Anti-Corruption Bureaus to which of the allegations should be dealt with departmentally and which should be investigated by the Central Bureau of Investigation/Anti-Corruption Bureau.

2.13.6 Parallel Investigation: Once a case has been referred to and taken up by the CBI/ACB for investigation, further investigation should be left to them and a parallel investigation by the Departmental agencies should be avoided. Further action by the Department in such matters should be taken on completion of investigation by the CBI on the basis of their report.²⁵

2.14 PRELIMINARY ENQUIRY BY DEPARTMENTAL AGENCIES²⁶

²⁴ Para 5.1 of Vigilance Manual

²⁵ Para 5.2 of Vigilance Manual

²⁶ Para 5.5 of Vigilance Manual

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2.14.1 After it has been decided that the allegations contained in the complaint should be enquired departmentally, the vigilance officer should proceed to make a preliminary enquiry with a view to determining whether there is, prima facie, some substance in the allegations. The preliminary enquiry may be made in several ways depending upon the nature of allegations and the judgment of the enquiry officer, e.g.: -

- a) If the allegations contain information which can be verified from any document or file or any other Departmental records, the enquiry / vigilance officer should, without loss of time, secure such records, etc., for personal inspection. If any of the papers examined is found to contain evidence supporting the allegations, such papers should be taken over by him for retention by the vigilance Department to guard against the possibility of available evidence being tampered with. If the papers in question are required for any current action, it may be considered whether the purpose would not be served by substituting authenticated copies of the relevant portions of the records; the original being retained by the enquiry officer in his custody. If that is not considered feasible for any reason, the officer requiring the documents or papers in question for current action should be made responsible for their safe custody after retaining authenticated copies for the purpose of enquiry.
- b) In case, where the alleged facts are likely to be known to other employees of the Department, the enquiry officer should interrogate them orally or ask for their written statements. The enquiry officer should make a full record of the oral interrogation which the person interrogated should be asked to sign in token of confirmation. Wherever necessary, any important facts disclosed during oral interrogation or in written statements should be verified by documentary or collateral evidence to make sure of the facts.
- c) In case, it is found necessary to make inquiries from the employees of any other Government Department or office, the investigating officer may seek the assistance of the Department concerned, through its CVO, for providing facility for interrogating the person(s) concerned and/or taking their written statements.
- d) In certain types of complaints, particularly those pertaining to works, the enquiry officer may find it helpful to make a site inspection, or a surprise check, to verify the facts on the spot and also to take suitable action to ensure that the evidence found there, in support of the allegations, is not disturbed.
- e) If during enquiry, it is found that it will be necessary to collect evidence from non-official persons or to examine any papers or documents in their possession, investigation in the matter may be entrusted to the Central Bureau of Investigation.

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- f) If the Officer complained against is in-charge of stores, equipment, etc., and there is a possibility of his tampering with the records pertaining to such stores or equipment, the enquiry / vigilance officer may consider whether the Officer concerned should not be transferred immediately to other duties. If considered necessary, he may seek the assistance of the head of the Department or office in doing so.
- g) While, normally, the preliminary enquiry will be made by the vigilance officer himself, he may suggest to the administrative authority to entrust the inquiry to any other officer considered suitable in the particular circumstances of the case, e.g., it may be advisable to entrust the conduct of the preliminary enquiry to a technical officer if it is likely to involve examination and appreciation of technical data or documents. Similarly, the administrative authority may entrust the inquiry to an officer of sufficiently higher status if the Officer complained against is of a senior rank.
- h) While conducting the inquiry, it is recommended that the Enquiry Officer may take the help of the Scientific Tools and Forensic Tools to aid the enquiry/investigation, whenever required.

2.14.2 During the course of preliminary enquiry by the Vigilance Department, the Officer concerned may be given an opportunity to say what he may have to say about the allegations against him to find out if he is able to give any satisfactory information or explanation. In the absence of such an explanation, the Officer concerned is likely to be proceeded against unjustifiably. It is, therefore, desirable that the enquiry officer tries to obtain the suspect officers' version of "facts" and why an inquiry should not be held. There is no question of making available to him any document at this stage. Such an opportunity, however, may not be given in cases in which a decision to institute Departmental proceedings is to be taken without any loss of time, e.g., in a case in which the Officer concerned is due to retire or to superannuate soon and it is necessary to issue a charge-sheet to him before his retirement; the facts are not in dispute; officer is not traceable; the officer is deliberately delaying his reports, etc.

2.14.3 On completion of the inquiry process, the officer conducting the inquiry would prepare a self-contained report including the material available to controvert the defence. The inquiry report should contain the explanation of the suspect officer. The fact that an opportunity was given to the officer concerned should be mentioned in the inquiry report even if the officer did not avail of it. The enquiry officer should also take all connected documents in his possession as this becomes very helpful if Departmental action has to be taken against the officer.

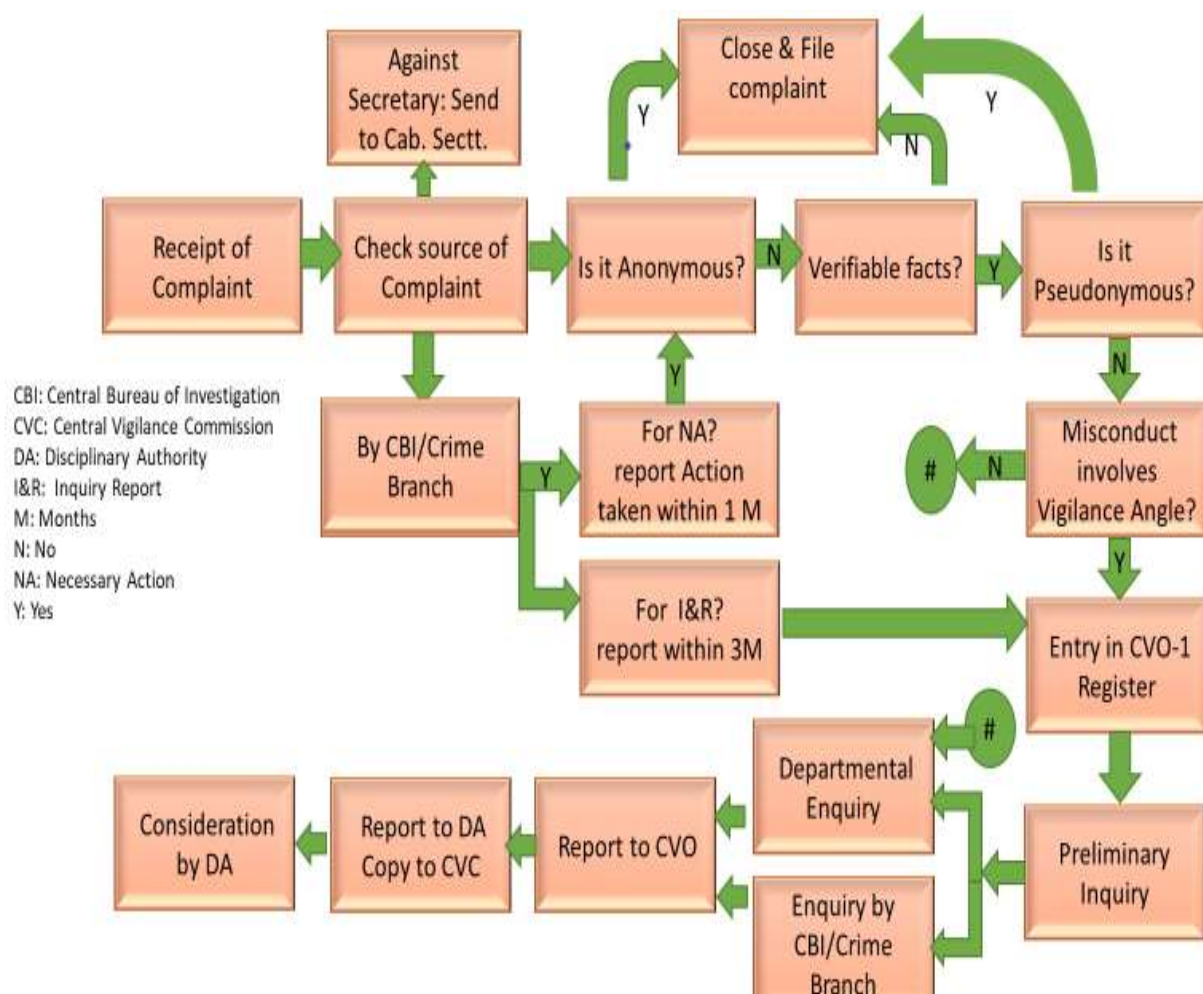
2.14.4 The enquiry officer will submit his report to the CVO, who will decide whether on the basis of the facts disclosed in the report of the preliminary enquiry, the complaint should be dropped or whether regular Departmental proceedings should be

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recommended against the Officer concerned or the administration of a warning or caution would serve the purpose. He will forward the inquiry report to the disciplinary authority, along with his own recommendations, for appropriate decision. The CVO, while submitting his report / comments to the disciplinary authority in the organisation, may also endorse an advance copy of the inquiry report to the CVC if the officials involved are under the jurisdiction of the Commission, so that it may keep a watch over deliberate attempts to shield the corrupt Officers either by delaying the submission of inquiry report to the Commission or by diluting the gravity of the offences/ misconducts.

2.14.5 The decision, whether Departmental action is to be taken against an Officer should be taken by the Disciplinary authority.

Procedure Flow Chart for handling complaints



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Format for Preliminary Investigation Report

- a) Source of information
- b) Gist of allegations
- c) Facts
 - a. Evidence collected
 - b. Statement of witnesses
 - c. Details of investigation
- d) Observations
- e) Statement, if any, of Suspected Officer
- f) Analysis of evidence
- g) Conclusions
- h) Responsibility of officials
- i) Recommendation for action
- j) Recommendation for systemic improvement

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CHECK LIST FOR HANDLING OF COMPLAINTS

S.No.	Particulars	Yes/No	Action/Remarks
1.	Is the Complaint against Secretary	Yes	Send to Cabinet Secretariat/DoPT
2.	Is the Complaint received from CVC under PIDPIR	Yes	Go to Sl. No.6
3.	Is source of complaint Anonymous	Yes No	Action – File. Go to Sl.No.4
4.	Are there Verifiable facts in the Complaint	No Yes	Action – File Go to Sl.No.5
5.	Check whether the complaint is Pseudonymous	Yes No	Action: File Go to Sl.No.6
6.	Is there a Vigilance Angle?	Yes No	Go to Sl.No.7 Go to Sl. No. 8
7.	Enter in CVO-1 Register	Yes	Go to Sl. No,8
8.	Preliminary Enquiry to be conducted by Department Officers	Yes No	Appoint Enquiry Officer Go to Sl.No.12

Activities:

S. No.	Particulars		Action/Remarks
1.	Secure and retain such records through which allegations can be verified		Wherever possible and required
2.	Prepare full record of the oral interrogation of persons in the Department interrogated and get their signature as token of confirmation		Wherever possible and required
3.	Site visit where required viz. in case of allegation relating to works etc.		Wherever required Go to Sl.No.13
4.	Preliminary Enquiry to be conducted by CBI/Crime Branch		Write to CBI/Crime Branch
5.	Prepare/Get Preliminary Enquiry Report		Check prima facie case exist, and evidence gathered
6.	Copy to CVC in case of vigilance angle cases		Yes: Await CVC comments No: Go to Sl.no.15
7.	Decision by DA		For Major or minor or exoneration

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CHAPTER-3

SUSPENSION

In this chapter the following aspects are covered:

- i. Suspension
- ii. Forms to be used for suspension and revocation

3.1 Suspension an administrative device

3.1.1 Suspension is a temporary deprivation of office. The contract of service is not terminated. However, the Government servant placed under suspension is not allowed to discharge the functions of his office during the period of his suspension. It is not a penalty under the All India Services (Discipline and Appeal) Rules, 1969. It is only an intermediate step and administrative in nature.

3.1.2 **Suspension is not a quasi-judicial order:** *In M. Nagalakshmiah vs. State of Andhra Pradesh, 1973(2) SLR AP 105, the Andhra Pradesh High Court held that “when superior authority also has the same power as his subordinate has in any case, in administrative matters, the superior authority instead of acting itself can direct such inferior authority to act. Even if it is considered that the subordinate authority acted at the instance of the superior authority, it would not be bad because the superior authority itself had such power and it cannot be said that the direction was given by an authority which was “not entrusted with the power to decide”. This would be so in administrative matters. It is not a case of quasi-judicial exercise of discretion. In administrative matters, the decision cannot be said to be bad in law. The order of suspension cannot but be an administrative order. It may be that from such an order of suspension some evil effects follow, and the officer suspended thereby is affected, but that would not make an order a quasi-judicial order.”*

3.2 Authorities empowered to suspend²⁷

3.2.1 Government of a State or the Central Government may suspend a member of service. However, the Chief Secretary, Director General of Police and the Principal Chief Conservator of Forests, who are the heads of the respective Services, shall not be placed under suspension without obtaining prior approval of the Central Government.

3.2.2 In case it is the State Government that passes an order placing under suspension a member of the Service against whom disciplinary proceedings are contemplated, such an order shall not be valid unless, before the expiry of a period of

²⁷ Refer Rule 3(1) of AIS(DA) Rules, 1969

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thirty days from the date from which the member is placed under suspension, or such further period not exceeding thirty days as may be specified by the Central Government for reasons to be recorded in writing, either disciplinary proceedings are initiated against him or the order of suspension is confirmed by the Central Government.

3.2.3 IAS officers working under Central Government shall only be suspended on the recommendations of the Central Review Committee with the approval of Minister-in-charge, Department of Personnel & Training. In case there is a difference of opinion between two State Governments, the matter shall be referred to the Central Government for its decision and if there is a difference of opinion between a State Government and the Central Government, the opinion of the Central Government shall prevail

3.3 Circumstances under which Member of service is suspended

3.3.1 A member of service may be placed under suspension in any of the following circumstances:

- i. Where a disciplinary proceeding is contemplated or is pending²⁸.
- ii. *In Secretary to Government vs. K. Munniappan, 1998(1) SLJ SC, the Supreme Court held that a member of a service may be placed under suspension, where an inquiry into grave charge against him is "contemplated" or "is pending" or a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest. Actual pendency of enquiry is not a pre-condition to suspend an officer. Pending further investigation into the offences is one of the grounds.*
- iii. Where in the opinion of the competent authority, he or she has engaged himself/herself in activities prejudicial to the interest of the security of the State²⁹;
- iv. Where in respect of a Member of Service, against whom an investigation, inquiry or trial relating to a criminal charge is pending may at the discretion of the Government be placed under suspension until the termination of all proceedings relating to that charge, if the charge relates to his/her position or is likely to embarrass him/her in the discharge of his/her duties or involves moral turpitude³⁰. *In D. D Suri vs A.K. Barren, 1976 SLJ 485(SC), the Supreme Court had held that an investigation becomes pending when First Information Report is filed and suspension from the date of F.I.R is well within*

²⁸ Refer Rule 3(1) of AIS(DA) Rules, 1969

²⁹ Refer Rule 3(1) of AIS(DA) Rules, 1969

³⁰ Refer Rule 3(3) of AIS(DA) Rules, 1969

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the ambit of the power of the Government. Therefore, a government servant can be suspended where an F.I. R is filed against him and where the competent authority concludes that the suspension of that Government servant is necessarily in the public interest.

3.3.2 Deemed Suspension

3.3.2.1 A Member of Service is deemed to have been placed under suspension by the competent authority in the following cases:

- i. In the event of conviction for a criminal offence, if he/she is not forthwith dismissed or removed or compulsorily retired consequent on such conviction provided that the conviction carries a sentence of imprisonment **exceeding forty-eight hours**³¹. The suspension will be from the date of conviction.
- ii. Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of the Service under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of such order and shall remain in force until further orders³².
- iii. Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of the Service is set aside or declared or rendered void in consequence of or by a decision of a Court of Law, and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold further inquiry against him on the allegations on which the penalty was originally imposed, the member of the Service shall be deemed to have been placed under suspension by the Central Government from the date of original order of penalty and shall continue to remain under suspension until further orders.³³

3.4 Suspension desirable in the following circumstances

3.4.1 Suspension is desirable in the following situations or circumstances:

- i. Any offence or conduct involving moral turpitude.
- ii. Corruption, embezzlement of misappropriation of Government money, possession of disproportionate assets, misuse of official power or machinery of Government.

³¹Refer Rule 3(4) of AIS(DA) Rules, 1969

³²Refer Rule 3(5) of AIS(DA) Rules, 1969

³³Refer Rule 3(6) of AIS(DA) Rules, 1969

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- iii. Serious negligence and dereliction of duty resulting in considerable loss to government.
- iv. Apprehension of the Government servant tampering with witnesses or documents.
- v. Involved in a public scandal.

3.4.2 On the conclusion of the disciplinary proceedings, if a minor penalty is imposed, suspension is /regarded as unjustified and full pay and allowances and other consequential benefits are given to him and the period of suspension is treated as duty³⁴.

3.5 Entitlements During Suspension.

3.5.1 A member of service placed under suspension or deemed suspension is entitled to draw a subsistence allowance at an amount equal to the leave salary which a member of the Service would have drawn if he had been on leave on half-average pay or on half pay and in addition, dearness allowance, if admissible based on such leave salary and CCA and HRA as admissible to him before suspension for first 3 months. If the period of suspension exceeds 3 months, the amount of subsistence allowance may be increased or decreased up to a maximum of 50% of the amount being drawn by him during the first three months, depending on whether the reasons for continued suspension are attributable directly or indirectly to the Government servant³⁵.

3.5.2 The amount of subsistence allowance once granted should be varied by the suspending authority only after recording in writing the reasons for increasing or decreasing the amount. A member shall also be entitled to compensatory allowance of which he was in receipt prior to suspension subject to the fulfilment of other conditions laid down for the drawal of such allowance³⁶.

3.5.3 Deductions from subsistence allowance³⁷

- A. The following deductions should be enforced from subsistence allowance:
 - i. Income tax and super tax (provided the member's annual income calculated with reference to subsistence allowance is taxable).
 - ii. House rent and allied charges i.e., electricity, water furniture etc.
 - iii. Repayment of loans and advances taken from Government at such rates as the competent authority deems it right to fix.
- B. The following deductions should not be made except with a member's written consent letter: -

³⁴ DOP&T OM NO. 11012/15/85-Estt(A) dated 3.12.1985.

³⁵ Rule 4(1) of AIS(DA) Rules, 1969

³⁶ Rule 4(1) of AIS(DA) Rules, 1969

³⁷ M.H.A. letter No. 7/18/59—AIS (II), dated 21st October 1959

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- i. Premium due on Postal Life Assurance Policies.
- ii. Amounts due to Co-operative Stores and Co-operative Credit Societies.
- iii. Refund of Advances taken from General Provident Fund.

C. The following deductions should not be made from subsistence allowances:

- i. Subscription to the All India Services Provident Fund.
- ii. Amounts due on Court attachments.
- iii. Recovery of loss to Government for which a member is responsible.

D. There is no bar to the recovery of overpayments from subsistence allowance, but the competent authority will exercise discretion in deciding whether recovery should be held wholly in abeyance during the period of suspension, or it should be affected at full or reduced rate depending on the circumstances of each case.

3.6 Validity of Suspension Order³⁸

3.6.1 An order of suspension made or deemed to have been made shall continue to remain in force until it is modified or revoked by the authority competent to do so. However, the order of suspension which has not been **extended** shall be valid for a period not exceeding **sixty days** at a time, unless revoked earlier.

3.6.2 An order of suspension which has been extended shall remain valid for a further period not exceeding **one hundred-twenty days**, at a time, unless revoked earlier.

3.6.3 An order of suspension made or deemed to have been made shall be reviewed by the competent authority on the recommendations of the concerned Review Committee.

3.6.4 The period of suspension may, on the recommendations of the concerned Review Committee, be extended for a further period not **exceeding one hundred and eighty days at a time**.

3.6.5 The period of suspension of a member of the Service on charges other than corruption shall not exceed **one year** and the inquiry shall be completed, and appropriate order shall be issued within one year from the date of suspension failing which the suspension order shall automatically stand revoked. However, the suspension can be continued beyond one year on the recommendations of the Central Ministry's Review Committee. the period during which the disciplinary proceedings remain stayed due to orders of a Court of Law, shall be excluded from this limit of one year.

³⁸ Rule 3(3), 3(4), 3(5), 3(7) & 3(8) of AIS(DA) Rules, 1969

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3.6.6 The period of suspension of a member of the Service on charges of corruption shall not exceed **two years** and the inquiry shall be completed and appropriate order shall be issued within two years from the date of suspension failing which the suspension order shall automatically stand revoked. However, the suspension can be continued beyond two years on the recommendations of the Central Ministry's Review Committee. the period during which the disciplinary proceedings remain stayed due to orders of a Court of Law, shall be excluded from this limit of two years.

3.7 Review Committees³⁹:

3.7.1 The Review Committee constituted by the Central Government shall consist of

- i. Secretary to the Government of India in the concerned Ministry/Department—Chairman.
- ii. Additional Secretary/Joint Secretary in charge of Administration in the concerned Ministry/Department—Member.
- iii. Any other Additional Secretary/Joint Secretary in the concerned Ministry/Department—Member.

Note: The Committee may, if considered necessary, co-opt an officer of the Department of Personnel and Training with the approval of Secretary (Personnel), Ministry of Personnel, Public Grievances and Pensions.

3.7.2 The Review Committee constituted by the State Government shall consist of

- i. Chief Secretary—Chairman.
- ii. Senior most Additional Chief Secretary/Chairman, Board of Revenue/ Financial Commissioner or an officer of equivalent rank and status—Member.
- iii. Secretary, Department of Personnel in the State Government—Member Secretary.

Note:

- i. The Home Secretary/Director General (Police) of the concerned States may be co-opted wherever a case concerning a member of the Indian Police Service is considered.
- ii. The Secretary Forest/Principal Chief Conservator of forest of the concerned State may be co-opted wherever a case concerning a member of the Indian Forest Service is considered by the Committee.
- iii. In States where Civil Services Board have been constituted, the State Government may entrust the work of the Review Committee to the Board.

³⁹ Rule 3 (8)(c) and Schedule I and II of AIS(DA) Rules, 1969

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3.7.3 Functions of Review Committee: —

- a) The Review Committee/ Civil Services Board shall review the cases of officers under suspension in order to determine whether they are of sufficient grounds for continuation of suspensions.
- b) In every case the review shall be done within **90 days** from the date of order of the suspension. In a case where the period of suspension has been extended, the next review shall be done within a period of **180 days** from the date of last extension.

3.7.4 Procedure for Review Committee:

- (a) The Review Committee/ Civil Services Board while assessing the justification for further continuance of any suspension, shall look into the progress of any enquiry/investigation against the officer by obtaining relevant information from the authorities enquiring/investigating into the charges.
- (b) The Review Committee/ Civil Services Board while examining a case shall consider the possibility of the officer under suspension tampering with the evidence, his influencing the process of enquiry or investigation and deprivation of his services during suspension.
- (c) The Review Committee/Civil Services Board shall submit a detailed report to the competent authority, clearly stating its recommendations and the reasons for arriving at the recommendations relating to the continuance of suspension.

3.7.5 The Central Ministry's Review Committee constituted by the Central Government: shall consist of –

- i. Secretary, Department of Personnel & Training, Govt. of India- Chairperson.
- ii. Secretary to the Government of India in the concerned Ministry/Department or a member nominated by him not below the level of Additional Secretary- Member.
- iii. Additional Secretary / Establishment Officer, Department of Personnel & Training, Govt. of India- Member

3.7.6 Functions of Central Review Committee:

On a reference being made by the Government that has ordered the suspension seeking extension beyond the period stipulated, the Central Ministry's Review Committee shall review the cases of officers under suspension on charges other than corruption in order to determine whether there are sufficient grounds for continuation

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of suspension beyond the period of one year and review the cases of officers under suspension on charges of corruption in order to determine whether there are sufficient grounds for continuation of suspension beyond the period of two years.

3.7.7 Procedure of Central Review Committee: -

- a) The Central Ministry's Review Committee while assessing the justification for further continuation of any suspension beyond the period of one year, where the member of the Service is placed on suspension on charges other than corruption, shall look into the progress of any enquiry or investigation against the member of the Service by obtaining relevant information from the authorities enquiring or investigating into the charges.
- b) The Central Ministry's Review Committee while assessing the justification for further continuation of any suspension beyond the period of two years, where the member of the Service is placed on suspension on charges of corruption, shall look into the progress of any enquiry or investigation against the member of the Service by obtaining relevant information from the authorities enquiring or investigating into the charges.
- c) The Central Ministry's Review Committee shall satisfy itself that the delay has occurred for reasons beyond the control of the disciplinary authority and reinstatement of the officer may result in his tampering with the evidence or otherwise influencing the process of enquiry or investigation.
- d) The Central Ministry's Review Committee shall submit a detailed report to the Central Government, clearly stating its recommendations and the reasons for arriving at the conclusions relating to the continuance of suspension.

3.8 Communication of Suspension Orders:

3.8.1 Every order of suspension and every order of revocation shall be made in the stipulated standard forms. A copy of the order shall be endorsed to the Appointing Authority, if the order is made by some other authority, and to the Lending Authority in the case of borrowed officer. The reasons for issue of every such order shall be communicated to the Appointing Authority and the Lending Authority, through confidential letters along with the order itself. A copy of the suspension order along with the reasons or grounds of suspension shall be communicated to the Cadre Controlling authority in the Central Government not later than forty-eight hours⁴⁰.

⁴⁰ Refer Rule 3(9) (d) of the AIS(DA) Rules, 1969

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3.8.2 As soon as a member of the Service is placed under suspension or is deemed to have been placed under suspension, the information in this regard shall be communicated to the Cadre Controlling Authority in Central Government within the period of **forty-eighty hours**⁴¹.

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

In *State of Punjab vs. Khemi Ram*, AIR 1970 SC 214, the Supreme Court held that "Order of suspension when once sent out takes effect from the date of communication / despatch irrespective of date of actual receipt. The Supreme Court further held that where a government servant, being on leave preparatory to retirement, an order suspending him is communicated to him by the authority by sending a telegram to his home address before the date of his retirement, the order is effective from the date of communication, and it is immaterial when he receives the order.

Communication of detailed Report

3.8.4 In case of an order of suspension is made, or deemed to have been made, by the Government of a State, detailed report of the case shall be forwarded to the Central Government within a period of **fifteen days** of the date on which the member of the Service is suspended or is deemed to have been suspended, as the case may be⁴².

⁴¹ Refer Rule 3(9) of the AIS(DA) Rules, 1969

⁴² OM No.11018/01/2013, Dated-25th May 2016

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CHAPTER-4**CHARGE SHEET**

In this Chapter the following aspects are covered:

- (i) Significance of issue of charge sheet in departmental proceedings,
- (ii) Applicability of Rule 8 of the 1969 Rules for imposition of Minor penalty,
- (iii) Competent Authority to approve the charge sheet,
- (iv) Guidelines for preparation of charge sheet,
- (v) Salient points for preparation of the four Annexures to the charge sheet,
- (vi) Effect of inaccuracies in preparation of charge sheet,
- (vii) Answers to some frequently asked questions,
- (viii) Check List for ensuring correctness of charge sheet,
- (ix) Important case law relating to charge sheet.

4.1. Introduction

4.1.1 Based on the findings in the Preliminary Investigation Report, a decision is to be taken on the future course of action. Available options are:

- (i) Closure of the case
- (ii) Administrative Action
- (iii) Departmental punitive action (for Minor or Major Penalty)
- (iv) Prosecution

4.1.2 If it is decided to take departmental punitive action, case is to be pursued under Part IV of the All India Services (Discipline & Appeal) Rules, 1969 (hereinafter “the 1969 Rules”). It needs to be noted that although the above 1969 Rules have a reference to Public Servants (Inquiries) Act 1850 (37 of 1850), the said Act has been repealed vide Repealing and Amending Act, 2017

4.2 Constitutional Obligation

4.2.1 One basic thing to remember while dealing with disciplinary proceedings is that issue of Charge sheet is the discharge of a constitutional obligation. It may be recalled that Article 311 (2) provides “...except after an inquiry in which he has been informed of the charges against him...”. Further, the *Audi Alteram Partem* (Hear the other side) Rule of the Principles of Natural Justice also requires informing the individual of the charge for which punishment is proposed to be imposed.

4.3 Choice of the Procedure

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4.3.1 First point to be considered at the time of initiating the proceedings is whether it is to be for Major or Minor Penalty. In this connection it is relevant to note that the Hota Committee in its report has observed as follows:

“46. In our view, a minor penalty Disciplinary Inquiry can be concluded within a maximum period of sixty days from the date of service of the Articles of Charge. In our opinion, a minor penalty swiftly but judiciously imposed by a Disciplinary Authority is much more effective than a major penalty imposed after years spent on a protracted Inquiry.”⁴³

4.3.2 Rule 8 (1), 8 (4), 10 (1) and 14

Unless the inquiry is dispensed with under Rule 14 of the AIS (D&A) Rules, 1969 drafting of charge sheet conforming to Rule 8 (4) read with Rule 10(1) (b), is the mandatory stage in the following instances:

- a. All cases of imposition of Major Penalty.
- b. In every case in which it is proposed to withhold increments of pay
 - i. For a period exceeding three years, or
 - ii. With cumulative effect for any period, or
 - iii. So as to adversely affect the amount of pension payable to him,
- c. In which the disciplinary authority is of the opinion that such inquiry is necessary.

4.3.3 Rule 10(1) of the 1969 Rules:

In the cases where a minor penalty other than what is referred to above is proposed to be imposed, the requirement as prescribed in Rule 10 (1) (a) is:

“Informing the member of the Service in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal.”

4.4 Issuing Authority

4.4.1 Rule 8(4) of the 1969 Rules provides that the Disciplinary Authority ‘shall draw up or cause to be drawn up’ the charge sheet. In this connection, it is significant to note that the Hon’ble Supreme Court in *Union of India Vs. B V Gopinath (2014) 1 SCC 351*, has held as under:

“49. Although number of collateral issues had been raised by the learned counsel for the appellants as well the respondents, we deem it appropriate not

⁴³Report dated 14.07.2010 of the Committee of Experts on Disciplinary and Vigilance Inquiries constituted by the Department of Personnel and Training on 12 May 2010

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to opine on the same in view of the conclusion that the charge sheet/charge memo having not been approved by the disciplinary authority was *non-est* in the eye of law “

4.4.2 Although the above ruling was in a case arising from CCS (CCA) Rules 1965, the ratio should apply to the cases of the members of All India Services also because Rule 8(4) of the 1969 Rules and Rule 14 (3) of CCS (CCA) Rules are identically worded. Thus, in the absence of the approval of the disciplinary authority, the entire proceedings are liable to be set aside.⁴⁴

4.5 Impact of inaccurate charge

4.5.1 Importance of the skills for preparation of charge sheet was impressed by CVC in its communication No.3(v)/99/8 dated 5th October, 1999 that:

“Inadequate skill in drafting the charge-sheet is one of the reasons which help the charged officials to get away with lapses/misconduct committed by them. Many cases fail before the Courts of Law just because of the defective framing of charge-sheets. It has been observed by the Commission that the charge sheets are sometimes framed in a very general way and the existing practice about framing of charges and imputations vary widely. Sometimes the charge itself is framed in a very general way, only pointing out that the official concerned has acted in an unbecoming manner or has shown lack of devotion to duty or has acted without integrity. The real issues, in such circumstances, are to be found in the statement of imputations. It has also been observed by the Commission that the organisations/ Ministries etc. while framing the charge sheets list serious irregularities/charges in the imputations but do not mention the same in the articles of charge.”

4.5.2 In this connection, it would be noteworthy that in the case of *M V Bijlani Vs. Union of India*, the Hon’ble Supreme Court vide its order dated 05th April 2006 set aside the penalty of removal from service imposed vide order dated 21.12.1983 and directed payment of 50% of the back wages and the cost of Appeal. One of the reasons for setting aside the penalty may be inferred from the following observation in the judgment:

“Evidently, the evidence recorded by the Enquiry Officer and inferences drawn by him were not commensurate with the charges. If it was a case of mis-utilisation or misappropriation, the Appellant should have been told thereabout specifically. Such a serious charge could not have been enquired without framing appropriate charges. The charges are otherwise vague.”⁴⁵

⁴⁴ Judgment dated 06.09.2013 in Civil Appeal No. 6348 of 2011

⁴⁵ *MV Bijlani Vs. union of India* [2006 (5) SCC 88]

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4.6 What is a Charge?**4.6.1** CVC Manual describes a charge as under:

“A charge may be described as the prima-facie proven essence of an allegation setting out the nature of the accusation in general terms, such as, negligence in the performance of official duties, inefficiency, acceptance of sub-standard work, false measurement of work executed, execution of work below specification, breach of a conduct rule, etc.”

4.6.2 So, a charge is essentially an omission or a commission i.e., the Charged officer has failed to perform the mandated duty or exhibit the expected conduct which is an omission; alternatively, the charged officer has committed something objectionable or prohibited by prescribed rules or code of conductor expected norms – which is a commission.

4.7. Drafting process

4.7.1 Basic material available for drafting of charge sheet is the Preliminary Investigation Report. Bulk of the content of Annexure II of the Charge Sheet viz. the statement of the imputations of misconduct or misbehavior may be carefully taken from the Preliminary Investigation Report. The above Report needs to be appropriately pruned to remove all unwanted and irrelevant information e.g., the views, opinion, conjectures, surmises, various probabilities/ possibilities etc. considered by the Preliminary Investigation Officer. While finalizing Annexure II, any reference to the documents that cannot be made available to the Charged Officer should be scrupulously avoided. Normally, the Preliminary Investigation Report is not made available to the Charged officer. Hence the Charge sheet should not contain any reference to the same.

4.7.2 It should also be ensured that all the details necessary for understanding the charge must be available in the charge sheet so that the allegations can be meaningfully contested.

4.7.3 Although the emphasis is on the content rather than the form of the charge sheet, it is desirable that while drafting charge sheet, the time-tested practice and form are adhered to.

Charge sheet contains four Annexures as under:

(a) **Annexure-I:** Articles of Charge. This is the essence of the omission or commission by the Charged Officer, which constitutes the misconduct and renders the CO liable for punishment.

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(b) **Annexure – II:** Statement of imputations of misconduct or misbehavior in support of each article of charge, containing all relevant facts including any admission or confession made by the member of the Service

(c) **Annexure – III:** List of documents by which, the articles of charge are proposed to be sustained.

(d) **Annexure – IV:** List of witnesses by whom the articles of charge are proposed to be sustained.

4.8 Annexure I: Article of Charge

4.8.1 **Rule 8(24)** The following provision in the Explanation under Rule 8(24) needs to be taken note of while drafting the charge sheet

“Explanation— If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the member of the Service has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge”

4.8.2 At times, the proceedings may establish a charge slightly different from the one levelled in the charge sheet. For example, the charge may be use of physical force; but the proceedings may establish intemperate behavior and utterance of abusive language. Under such a scenario, the Inquiring Authority is not expected to confine himself to simply recording that the charge of use of physical force was not established. Above Explanation mandates that the Inquiring Authority has a duty to record his finding that the charge of intemperate behavior has been established in the inquiry. Of course, this is subject to the condition that the charged officer had a reasonable opportunity of defending himself against this charge also. It needs to be understood that “any article of charge different from the original articles of charge” referred to in the Explanation cannot be a totally different charge from the original article of charge. It cannot be that inquiry against the original article of charge of unauthorized absence, will establish embezzlement. The scope of the Explanation under Rule 8(24) must be understood in the light of the judgment of the Hon’ble Supreme Court in the case of M V Bijlani (Supra).

4.8.3 Although certain amount of flexibility has been provided to the Inquiring Authority to pronounce his opinion on a charge other than the one in the original articles of charge, this liberty is with certain riders and therefore, resorting to this facility needs

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to be avoided to the extent possible.

4.8.4 At times, while articulating the articles of charge, several options may emerge. For example, a set of facts may lead to charges such as:

- a) Gross negligence resulting in loss of Government Property
- b) Abetment to theft
- c) Commission of theft, etc.

Asking the following questions under each option may help in identifying the appropriate charge:

- a) Is there evidence to sustain this charge or should it be toned down to suit available evidence?
- b) Is that so simple a matter or something more serious?

4.8.5 Vigilance Manual prescribes that “A charge should briefly, clearly and precisely identify the misconduct / misbehaviour. It should also give time, place and persons or things involved so that the public servant concerned has clear notice of his involvement.”

4.8.6 It may be seen from the above, that brevity, clarity and focus are the three essential features of a charge.

4.8.5 One thumb Rule is that the Charge sheet should be in as few words as possible and free from verbose. Piling up phrases such as, with ulterior motives, fraudulently, stealthily, dishonestly, etc. may not be indicative of good drafting skills.

4.8.7 Generally, each article of charge should contain the following details if applicable to the case:

- a) The identity of the charged officer i.e., name designation, and the position held at the time of the misconduct
- b) If the charged officer was under suspension, the same should also be indicated
- c) The omission or commission which constitutes the misconduct
- d) Place
- e) Date
- f) Time
- g) Persons involved in the incident
- h) Money
- i) Impact on the organisation
- j) Rule violated
- k) Nature of misconduct i.e., negligence, theft, disobedience, misappropriation, etc.

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4.8.8 Illustration:

Shri. ABC, (Current Designation) while working as (Designation at the time of misconduct) in (Place of posting at the relevant time) during (period) submitted a LTC claim for Rs. of having visited Kanyakumari with family by II AC. On verification, it transpired that the ticket having PNR number (.....) quoted by Shri in his claim was cancelled three days before the journey. Shri has thus filed a false claim and tried to defraud the Government by Rs. Shri thereby exhibited lack of absolute integrity and conduct unbecoming of a Govt. Servant and violated Rule and of Rules.

Details such as the following will be included in Annexure – II:

- (a) Details of leave applied for
- (b) Details of family members for whom LTC was availed
- (c) Block year for which LTC was availed
- (d) Details of advance if any granted
- (e) Details of the claim submitted together with the PNR numbers
- (f) Details of the references under which the verification was carried out

4.9 Guidelines for drafting charge sheet

4.9.1 Guidelines for drafting charge sheet as contained in the Vigilance Manual need to be followed. Some points are elucidated with illustration at the relevant portions of this Chapter.

4.9.2 Annexure I

4.9.2.1 Vagueness is the most common as well as the most serious defect in charge sheet.

4.9.2.2 Time and again the Hon'ble Supreme Court has reiterated that the charges must be clear, precise and free from vagueness. In *Anil Gilurker Vs. Bilaspur Raipur Kshetria Gramin Bank & Anr.*, the Hon'ble Supreme Court, restored the judgment of the Single judge of Chhattisgarh High Court directing reinstatement of the appellant in service with continuity in service and without loss of seniority in the post to which he would be entitled to." for the sole reason that the charges were vague, and the details were not provided in the Charge sheet.

The Apex Court observed,

"A plain reading of the charges and the statement of imputations reproduced above would show that only vague allegations were made against the appellant that he had sanctioned loans to many brick manufacturing units by committing irregularities but did not disburse the entire loan amount to the borrowers and while a portion of the loan amount was deposited in the account of the borrowers, the balance was misappropriated by him and others. The details of the loan accounts or the names of

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the borrowers have not been mentioned in the charges. The amounts of loan which were sanctioned and the amounts which were disbursed to the borrowers and the amounts alleged to have been misappropriated by the appellant have not been mentioned"⁴⁶.

4.9.2.3 In this regard the law laid down by the Hon'ble Supreme Court is as under:

*"In view of the above, law can be summarized that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry must be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor the same should be based on conjunctures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct."*⁴⁷

4.9.2.4 It is also relevant that the details may be available in the Imputations. The Bombay High Court in its judgment dated 24th July 2018 in Writ Petition No. 2207 of 2005 has held that Annexures I and II are to be read conjointly and the details may be available in either one of the two Annexures⁴⁸.

4.9.2.5 Sometimes the same transaction may amount to more than one type of misconduct. For example, an act of disobedience may also amount to lack of devotion to duty, an act of non-compliance of the provisions of Manual for Storekeeping may involve lack of absolute integrity as well, etc. In such instances, all the misconducts should be included in the charges.

4.9.3 Annexure II

4.9.3.1 Annexure II is expected to contain the complete details of the case necessary for the charged officer to understand the allegations against him/her and put up a meaningful defence. As already stated there should be no reference to any document that cannot be made available to the charged officer.

4.9.4 Annexures III and IV

4.9.4.1 As seen above, these two annexures contain the details of the documents and the witnesses based on which it is proposed to establish the charge. As is well known, conclusions in the enquiry are to be based on evidence and there is no room for

⁴⁶ (2011) 14 SCC 379 Judgment dated 15 Sep 2011 in Civil Appeal No. 7864-7865 of 2011

⁴⁷ Union of India & Ors. vs. Gyan Chand Chattar [(2009) 124 SCC 78], Judgment dated 28 May 2009 in Civil Appeal No. 4174 of 2003

⁴⁸ Smt. S. Janaki Iyer vs Union of India and Ors.

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conjectures and surmises in establishing the charge. Accordingly, adequate care must be taken to ensure that all relevant evidence is included in either of these two annexures.

4.9.4.2 Appropriate approach for identifying the evidence required is the development of “Charge – Facts– Evidence” correlation. Every charge emerges from a set of facts and relevant facts are to be established through evidence. Thus, the first step is to identify the facts that establish the charge. All the facts forming the basis for each, and every charge are to be identified exhaustively without exception. Thereafter, the evidence to establish the facts are to be entered in Annexure III and/or Annexure IV.

4.9.4.3 One basic rule is that documentary evidence is more reliable than oral witnesses for several reasons such as (i) documents do not change their stand, (ii) unlike oral witnesses, documents once collected are available at any point of time (iii) documents are not subjected to cross examination and the chances of their credibility being damaged is remote, etc. At any rate, care must be taken to ensure availability of the originals or certified copies of the documents before issue of charge sheet.

4.9.4.4 Importance of breaking the charge into facts to be established may be appreciated through the following illustration.

4.9.4.5 In the case of *Union of India & Ors Vs. Gyan Chand Chattar* (Supra), one of the charges was “You have travelled in First Class on 24.11.1979 by 47 DN. when you are not entitled to this case. “As regards this charge, the Hon'ble Supreme Court observed, “As the second component of the issue, i.e., as to whether the respondent was entitled to travel in first class compartment or not had not been dealt with at all, the first charge could not be held to have been proved”.

4.9.4.6 This indicates that the authorities had failed to consider that the following two facts had to be proved for establishing the charge viz. (i) that the charged officer had travelled by the First class and (ii) that he was not entitled to travel by First class.

4.9.4.7 It may be noted that although the charge is of one line only, two distinct facts are required to be established for proving this charge.

4.9.4.8 After preparation of the charge sheet, it must be examined from the point of view of the charged officer – to look for the chinks in the armour.

4.10 Frequently Asked Questions

4.10.1 How many charges can be there in a charge sheet?

Answer: There is no limit; rather, number is not the criterion. It must be ensured that

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each individual transaction is covered by a separate charge. If an officer has sanctioned a subsidy in seven ineligible cases, there must be seven independent charges for each of the sanctions. On the other hand, splitting one event into several stages and levelling a charge for each stage should be avoided. For example, if an ineligible candidate was selected for an appointment, it should not be split into several charges viz. (i) accepting application from an ineligible candidate, (ii) shortlisting an ineligible candidate, (iii) calling an ineligible candidate for interview, (iv) selecting an ineligible candidate (v) issuing offer of appointment to an ineligible candidate and (vi) appointing an ineligible candidate

4.10.2 How many proceedings can be simultaneously in progress against an employee?

Or

Is it necessary to withdraw the earlier charge sheet before issuing another charge Sheet?

Answer: This aspect has been clarified by the Hon'ble Supreme Court as under:

"There is no requirement in law that for continuing with fresh proceedings the charge sheet issued must indicate that the previous proceedings pending have been given a go by. The employer is free to proceed in as many departmental proceedings as it considers desirable. Even in a hypothetical case in two of the departmental proceedings the finding is in favor of the delinquent employee, yet in another departmental proceeding finding adverse to the delinquent officer can be recorded."⁴⁹

4.10.3 Can the charge sheet be amended after issue?

Answer: It is a general principle of law that a power to perform an act includes power to perform all acts incidental and ancillary thereto. Accordingly, the disciplinary authority who has power to issue charge sheet has inherent powers to modify the same. This aspect has been explicitly clarified vide Department of Personnel and Administrative Reforms Letter No.11018/8/81-AIS(III), dated the 25th of November 1981.

4.10.3.2 However, the above power must be carefully exercised so as not to infringe the right of reasonable opportunity of defence. Firstly, the charged officer should be provided opportunity of defence vis-à-vis the amended charge sheet. For example, if a new document is added to Annexure III, the charged officer should be allowed inspection of the new document(s) and allowed to modify the list of documents and witness sought by him earlier to support his defence.

4.10.3.3 The following observation of the Hon'ble High Court of Delhi clarifies this point more eloquently:

⁴⁹Indian Drugs & Pharmaceuticals vs. R.K. Shewaramani ,2005(6) JT 557

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“11. The action of the respondent in some way is equivalent to amending of a plaint containing the cause of action. Since there cannot be a bar upon the departmental authority altering the articles of charges, so that a clear-cut charge-sheet is thereafter made out, I do not find that petitioner is entitled to complain with regard to altering of article of charges. The petitioner will have a right in the departmental proceedings to contest the charges on all issues of facts and law, but the enquiry itself cannot be quashed.”⁵⁰

4.10.3.4 In this connection, it is significant to note that the penalty of dismissal was set aside by the Hon’ble High Court of Delhi in *M.G. Aggarwal vs Municipal Corporation of Delhi* holding as under:

“(7) It is obvious that the effect of the corrigendum would be to make out a new charge against the petitioner. However, the earlier enquiry was not terminated, and new enquiry was not commenced against the petitioner. The corrigendum substantially altered the charge against the petitioner. No new enquiry was held. the petitioner has been denied an opportunity to meet the amended charge, as amended by the corrigendum. He has not been permitted to file reply to the amended charge. This being the case, the petitioner not having been given the opportunity to defend himself, the entire enquiry proceedings are bad in law, and the order of termination dated 24/07/1986 as well as the appellate order dated 18/11/1986 must be quashed.”⁵¹

4.10.4 Can the disciplinary authority withdraw a charge sheet and issue a fresh one?

Answer: Action of the disciplinary authority in withdrawing a charge sheet and issuing a fresh one was questioned by the charged official in WP(C) Nos.7615/2008 & 540/2012 before the Hon’ble High Court of Delhi which held as under:

“11. In fact, even de hors the issue of amendment of articles of charges like amendment of a plaint there is no bar in law in initiating a new enquiry on new article of charges. The petitioner will have a right in the departmental proceedings to contest the charges on all issues of facts and law, The petitioner can complain about altering of articles of charges, if the enquiry proceedings has already been completed and a penalty is proposed to be issued not on the basis of the old articles of charges for which enquiry was held but with respect to new articles of charges with respect to which there are no departmental proceedings, however, if departmental proceedings are still to take place i.e. both the parties have to lead evidence and the enquiry officer has to give a report, there is no prejudice in issuing of a fresh charge-sheet

⁵⁰ Judgment dated 19 March 2013 in W.P.(C) NO.7615/2008 Shri S.M. Dongarwar vs Pec Limited

⁵¹ Delhi High Court Judgment dated 10 July 1987 [32 (1987) DLT 394]

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once the corporation found that there was additional material or certain facts may have been left out and which were thereafter sought to be added in the new charge-sheet dated 20.6.2011. There is no principle of estoppel with respect to articles of charges once the new articles of charges seek to add facts which in any case have yet to be enquired into and findings arrived at before the same can be the basis of an order by the disciplinary authority. I may note that in this case enquiry proceedings were to be continued but no final order was to be passed as per the order of the learned Single Judge of this Court on 13.8.2012.⁵²

4.11 Conclusion

4.11.1 It would be better to bear in mind that the drafting of a charge sheet is akin to setting up a missile. A small error in the direction of the missile while setting it may result in the missile falling miles away from the intended target.

Check List for Drafting of Charge Sheet

S. No.	Detail	Yes/No/ Not Applicable	Remarks
A. Annexure I: Articles of Charge			
1.	Are the following details about the Charged Official correctly reflected? (a) Name (b) Designation		
2.	If the charged officer is under suspension at the time of issue of charge sheet, whether the fact is mentioned along with the designation?		
3.	Are the following details about the omission/commission leading to the charge correctly reflected?		
	(a) Period of the incident – either date and time or the span of period		
	(b) Has the period been described as accurately as possible?		
	(c) Is there any need to use phrases such as, <i>about, around, approximately</i> , etc.		
	(d) Identity (Name, designation, relationship, address, legal/official status/inter-se relationship, etc.) of the person(s) involved in the incident		
	(e) Place of the incident		

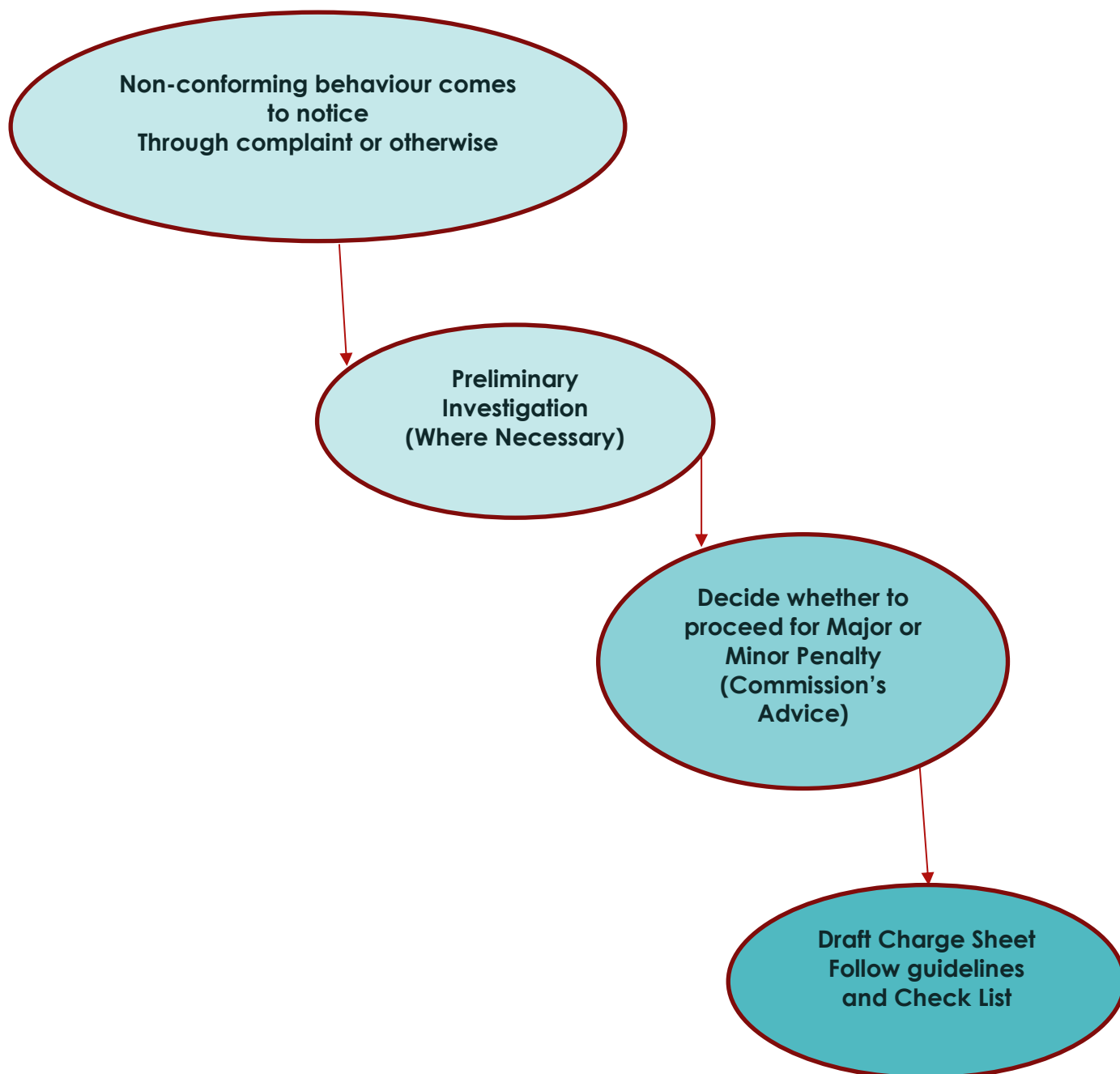
⁵² Judgment dated 19 March 2013 in W.P.(C) NO.7615/2008 *Shri S.M. Dongarwar vs Pec Limited*

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	(f) Amount involved		
4	Does the Article of Charge state the omission/commission?		
5	Does the Article of Charge reveal the adverse impact of the misconduct on the organization?		
6	Has the Article of Charge state which provision been violated?		
B. Annexure II. Statement of imputations of misconduct or misbehaviour			
7	Has the incident been sequentially and unambiguously narrated?		
8	Can the narration be read to mean something other than what is intended?		
9	Does the imputation refer to any document that cannot be made available to the Charged Officer? [Say, the Preliminary Investigation Report]		
10	Whether the narration is free from opinions, conjectures. Surmises, probabilities/possibilities, etc. – especially those considered by the Preliminary Investigation Officer		
11	Whether the statement of imputations is free from any discussion on the merit of the case?		
12	Does the narration contain any material which may damage the case of the Disciplinary Authority?		
C. Annexures III and IV: List of documents and witnesses			
13	Whether the originals or certified copies of all the documents mentioned in Annexure III are available?		
14	Whether the authentic copies of all the pre-recorded statements of the witnesses, if taken during Preliminary Investigation, are available?		
15	Whether the contact details of all the witnesses are available?		
D: General			
16	Whether this charge was levelled earlier against the Charged Officer?		
17	If yes, what is the justification for issue of this charge sheet?		
18	Whether the First Stage Advice of the CVC obtained; or not required?		
19	If the first stage advice of CVC was obtained, is it made available with the Charge sheet?		
20	Has the draft Charge Sheet been approved by the disciplinary Authority?		

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DRAFTING OF CHARGE SHEET – FLOW DIAGRAM



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CHAPTER-5

INQUIRY

5.1 Introduction

5.1.1 Rule 6 of the 1969 Rules lays down the penalties which may be imposed on a member of the Service. This rule further states that the penalties are to be imposed *“for good and sufficient reasons and as hereinafter provided”*. Succeeding Rules provide the procedure to be followed before imposing any of the penalties on the members of the Service. In this Chapter, we discuss the details of these procedures to the extent of ascertaining the truth behind the allegations against a member of the Service. Above mentioned procedure culminates in the submission of Inquiry Report. Action after the finalisation of Inquiry Report is dealt with in Chapter 8.

5.1.2 At the outset, it needs to be borne in mind that the procedure discussed hereunder in this Chapter are applicable under normal circumstances. There are some special procedures applicable under some specific situations such as common proceedings, ex-parte inquiry, etc. These are discussed in Chapter 6. Further, the procedure relating to cases of Sexual Harassment at Workplace are discussed in Chapter 7.

5.2 Disciplinary Authority

Rule 7 of the 1969 Rules lays down the Disciplinary Authority empowered to impose penalty, under various circumstances. Following broad details are relevant for consideration:

- (a) Central Govt. has over-riding powers as Disciplinary Authority. State Govt.'s powers are under specific circumstances while the member of the Service is serving in connection with the affairs of the State and circumstances incidental thereto, such as leave, deputation, etc. from the State Govt. However, residual powers rest with the Central Govt.
- (b) Rule 7 (1B) AIS (D&A), 1969 provides that *“if in any case, a question arises as to the Government competent to institute disciplinary proceedings, it shall be decided by the Central Government”*
- (c) As regards the probationers, the heads of the respective apex training Institutes of the three services have been empowered to initiate proceedings in accordance with the prescribed procedure laid down in rule 10 of the 1969 Rules. Thereafter, the case shall be transferred to the Central Government for further action.

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(d) Rule 7 (2) provides, *“The penalty of dismissal, removal or compulsory retirement shall not be imposed on a member of the Service except by an order of the Central Government”*

(e) Second proviso to Rule 7 provides as under:

Provided further that where the Government concerned are the Central Government and the State Government or two State Governments and there is a difference of opinion between the said Government in respect of any matter referred to in this rule, the matter shall be referred to the Central Government for its decisions, which shall be passed in consultation with the Commission.

5.3 Stages of Inquiry

In the previous chapter, we have dealt with the drafting of Charge Sheet and its approval by the Disciplinary Authority. The stages after the drafting of Charge Sheet are dealt with in this Chapter. As already stated, in this Chapter, we are discussing the Inquiry procedure up to the stage of submission of the Inquiry Report which shall state whether the charges levelled against the delinquent official are proved or not. For the ease of understanding, action after the drafting of Charge Sheet (hereinafter referred to as “Charge Memo”) and till the submission of Inquiry Report may be considered under the following stages:

- (a) Pre-Hearing Stage
- (b) Preliminary Hearing Stage
- (c) Regular Hearing Stage
- (d) Post Hearing Stage

5.4 Pre-Hearing Stage

5.4.1 The procedure laid down in Rule 8 of the 1969, Rules provides are to be perceived as broad guidelines for holding inquiry. This is evident from the phrase, *“after an inquiry is held as far as may be, in the manner provided in this rule and rule 10”* occurring in Rule 8(1) of 1969, Rules. The essence of the procedure is fairness and reasonable opportunity conforming to the broad parameters of the Constitutional provisions and the Principles of Natural Justice.

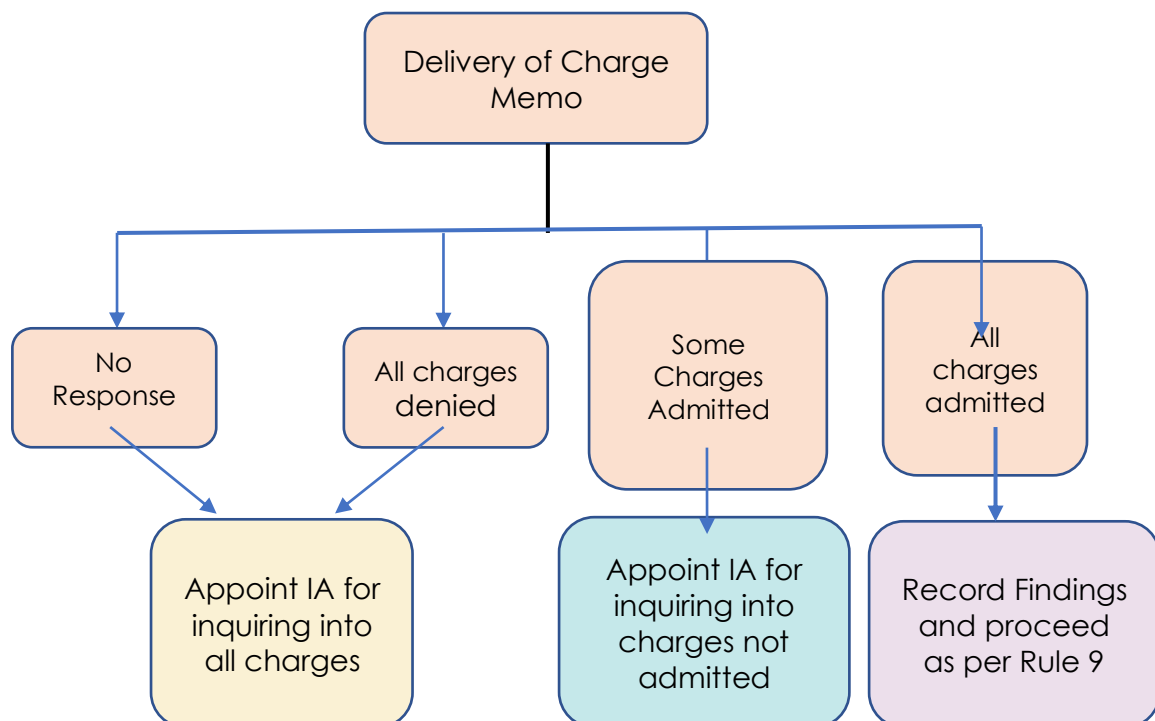
5.4.2 Rule 8(2) provides for appointment of an Inquiring Authority *“for inquiring into the truth of any imputation of misconduct or misbehaviour against a member of the Service”* Rule 8(3) provides that the Authority so appointed may be a Board, implying that it need not necessarily be an individual. This sub-rule further provides that *“Where a Board is appointed as the inquiring authority, it shall consist of not less than two senior officers provided that at least one member of such a Board shall be an officer of the Service to which the member of the Service belongs.”*

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5.4.3 Charge Sheet needs to be approved by the Disciplinary Authority. [*Union of India Vs. B V Gopinath, (2014) 1 SCC 351*] Charge Memo is served on the member of the Service along with a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained, as required under Rule 8 (5).

5.4.4 Rule 8(5) provides that “On receipt of the articles of charge the member of Service shall be required to submit his written statement of defence, if he so desires, and also state whether he desires to be heard in person, within a period **of thirty days**, which may be further extended for a period not exceeding **thirty days** by recording reasons in writing by the disciplinary authority or any other authority authorised by the disciplinary authority on his behalf” As per the proviso to the above rule, “under no circumstances, the extension of time for filing written statement of defence shall exceed **ninety days** from the date of receipt of articles of charge.”

5.4.5 Likely outcomes and the action of the Disciplinary Authority on receipt of the written statement are as under:



5.4.6 Clause (c) of Rule 8 (6) provides that “Where the disciplinary authority appoints an inquiring authority for holding an inquiry into such charge it may by an order, appoint a government servant or a legal practitioner, to be known as the “Presenting Officer” to present on its behalf the case in support of the articles of charge.”

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5.4.7 Rule 8(7) provides that the Disciplinary Authority shall forward the following to the inquiring authority:

- i. A copy of the articles of charge and the statement of imputations of misconduct or misbehaviour.
- ii. A copy of the written statement of defence if any submitted by the member of the Service.
- iii. A copy of the [statements] of witness, if any, referred to in sub-rule (4)
- iv. Evidence proving the delivery of the documents referred to in sub-rule 4 to the member of the Service; and
- v. A copy of the order appointing the “Presenting Officer”.

5.4.8 This is the stage where the Inquiring Authority takes charge of the situation. Proceedings by the Inquiring Authority from the receipt of appointment order to submission of the Inquiry Report, are generally perceived to fall under two stages viz. Preliminary Hearing and Regular Hearing – for the sake of convenience.

5.5 Preliminary Hearing

5.5.1 The objective of the Inquiring Authority is to ascertain the truth behind the allegations levelled in the Charge Memo. While doing so, reasonable opportunity has to be provided to the member of the service – as mandated by Article 311 (2) of the Constitution and the Principles of Natural Justice. For this purpose, evidence – documentary and oral – are led by the parties and taken on record by the Inquiring Authority subject to certain conditions. The stage up to the examination of oral witnesses is known as Preliminary Hearing

5.5.2 As per Rule 8(8), the member of the service “*shall be required to appear in person before the inquiring authority at any time prescribed after the expiry of ten working days from the date of receipt of the articles of charge and statement of imputations of misconduct or misbehaviour, or within such further time, not exceeding ten days, as the inquiring authority may allow.*”

5.5.3 As part of the reasonable opportunity of defence, the Rules provide for engagement of a Defence Assistant by the member of the Service to present the case on his behalf. Such Defence Assistant may be any other Government servant but may not be a legal practitioner unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits. Note under Rule 8 (9) (b) further provides that “*the member of the Service shall not take the assistance of any other Government servant who has **two or more pending** disciplinary cases on hand in which he has to give assistance.*”

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5.5.4 Although the Rules are silent as to the circumstances wherein a legal practitioner may be allowed as Defence Assistant, a non-exhaustive list of factors to be considered while examining the request of the Charged Officer for engagement of legal practitioner has been provided in DoPT letter No. 6/8/72-Disc. I dated 29 Aug 1972:

- (a) Status of the PO
- (b) His experience in this job
- (c) Volume and nature of documentary evidence produced.

The above letter also states that the sole criterion by which the Disciplinary Authority must be guided is, whether the rejection of the request could be construed as denial of reasonable opportunity. Subsequently, the MHA DP&AR vide its **OM No. 11012/7/83-Estt. (A) Dated 23rd July 1984** has clarified that when on behalf of the Disciplinary Authority the case is being presented by the Prosecuting officer of the CBI or the Law officer (such as Legal Advisor, Junior Legal Advisor) the request deserves to be considered favourably.

5.5.5 Instead of engaging a Government Servant or a Legal Practitioner, the member of the Service is also at liberty to take the assistance of a retired Government servant to present the case on his behalf, subject to such conditions as may be specified by the President from time to time by general or special order in this behalf.

5.5.6 When the member of the Service appears before the Inquiring Authority, the latter shall ask whether the member of the Service is guilty or has any defence to make. If the member of the Service *"pleads guilty to any of the article of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the member of the Service thereon."* Thereafter the inquiring authority shall return a finding of guilt in respect of [those] articles of charge to which the member of the Service pleads guilty under Rule 8 (11).

5.5.7 In respect of the Articles of charge for which the member of the Service has not pleaded guilty or has not pleaded anything at all, the Inquiring Authority will provide the following opportunities of defence under Rule 8 (12) to the member of the Service as per the timeline indicated and adjourn the hearing to a later date **not exceeding 30 days**:

S. No.	Facility	Timeline
(a)	Inspection of documents listed in Annexure III of the Charge Memo	Five days of the order of the Inquiring Authority – extendable by maximum of five more days

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(b)	Submission of list of witnesses to be examined on behalf of defence	Although time limit is not specifically stated under Rule 8(12) (ii), the timeline under Rule-8(12) (iii) i.e., ten days may be considered to apply for this also.
(c)	Copies of the statements of the witnesses referred to in Annexure IV of the Charge Memo	As early as possible and in any case not later than three days before the commencement of the examination of the witness on behalf of the disciplinary authority.
(d)	Giving notice for the discovery or production of any documents which are in the possession of Government but not mentioned in Annexure III of the charge memo, indicating the relevance of the documents	Within ten days of the order or, within such further time not exceeding ten days as the inquiring authority may allow

5.5.8 Rule 8(21) also provides that the Inquiring Authority may proceed **ex parte** if the member of the Service fails to appear within the specified time or refuses or omits to plead. Under such a scenario, the Presenting Officer shall be required to produce the evidence by which he proposes to prove the articles of charge. Opportunities of defence available to the member of the Service shall be communicated through an order and case adjourned to a later date, **not exceeding thirty days**.

5.5.9 Rule 8(13) mandates that the inquiring authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept with a requisition to produce the document by such date as may be specified in such requisition. Proviso to Rule 8 (13) empowers the inquiring authority to refuse to requisition such of the documents as are, in its opinion not relevant to the case. However, such refusal is to be supported by reasons to be recorded in writing.

5.5.10 Every authority having custody or possession of the requisitioned documents is mandated to produce the same before the inquiring authority, subject to the liberty granted under the proviso to Rule 8 (14) that *“for reasons to be recorded by it in writing, that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly.* Proviso further provides that *“the inquiring authority shall, on being so informed, communicate the information to the member of the Service and withdraw the requisition made by it for the production or discovery of such documents.”*

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5.5.11 Events occurring after production or discovery of documents sought by the member of the Service may be classified under Regular Hearing, which is discussed hereunder.

5.6 Regular Hearing

5.6.1 Evidence on behalf of the disciplinary authority is led by the Presenting officer in the first instance. While the documentary evidence can be taken on record with the knowledge of and copies to both the parties, witnesses who tender Oral Evidence are examined under three distinct stages viz. Examination in Chief (hereinafter 'EIC' for short), Cross-Examination and Re-Examination.

5.6.2 EIC is done by the party who calls the witnesses i.e., EIC of State witnesses will be done by the Presenting Officer and EIC of Defence Witnesses will be done by the member of the Service aided by the Defence Assistant. Cross-examination is done by the opposite party. Re-examination is done by the party who named the witness, on any point, on which the witnesses have been cross examined, but not on any new matter, without the leave of the inquiring authority.

5.6.3 Rule 8(15) further provides that the inquiring authority may also put such questions to the witnesses as it thinks fit. Although the rule specifically empowers the Inquiring Authority to put questions to the witnesses, this liberty is to be availed with necessary prudence and caution. Questioning the member of the Service or even witnesses from either side in a way indicative of the effort to establish the charge may raise doubts about the neutrality of the Inquiring Authority. In this connection the following extract from the judgment dated 13.08.2008 of the Hon'ble Supreme Court in *State of Uttaranchal & Ors. Vs. Kharak Singh* is relevant:

A perusal of the report shows that the enquiry officer himself inspected the areas in the forest and after taking note of certain alleged deficiencies secured some answers from the delinquent by putting some questions. The Enquiry Officer himself has acted on the Investigator, Prosecutor and Judge. Such a procedure is opposed to principles of natural justice and has been frowned upon by this Court.⁵³

5.6.4 Rule 8 (16) provides for examination of additional witnesses on behalf of the Disciplinary Authority either on request from the Presenting Officer or Suo-Motu, as well as for recall and re-examination of any witnesses. This liberty is, however, subject to the following conditions:

- (a) This option must be exercised before the closure of the case on behalf of the Disciplinary Authority.

⁵³ [State of Uttaranchal & Ors. V. Kharak Singh](#) [(2008) 8 SCC 236]

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- (b) The member of the Service shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned.
- (c) The inquiring authority shall give to the member of the Service an opportunity of inspecting such documents before they are taken on the record.
- (d) The inquiring authority may also allow the member of the Service to produce new evidence, if it is of opinion that the production of such evidence is necessary in the interests of justice.
- (e) New evidence shall not be permitted or called for or any witness shall not be recalled filling up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

5.6.5 Under Rule 8(17), on closure of the case of the Disciplinary Authority, *“the member of the Service shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded, and the member of the Service shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer”*.

5.6.6 Thereafter, the witnesses on behalf of the member of the Services including the member himself, if he so prefers, will be examined in the same way the witnesses of the Disciplinary Authority were examined— i.e., Examination in Chief (Mandatory Questions/General Examination), cross-examination and re-examination.

5.6.7 Rule 8 (19) mentions a crucial stage of the inquiry which, in common parlance, is referred to as ‘mandatory question’. Although it is named ‘mandatory question’ in effect it comprises informing the member of the Service *“on the circumstances appearing against him in the evidence for the purpose of enabling the member of the Service to explain any circumstances appearing in the evidence against him”*

5.6.8 It needs to be appreciated that proceedings are liable to be set aside for not asking the mandatory question or for incorrectly articulating it. *Ministry of Finance Vs. S B Ramesh [(1998) 3 SCC 227]* and *Moni Shankar Vs. Union of India, [(2008) 3 SCC 484]* are two cases of this nature. Therefore, the manner of articulating the question should also be recorded appropriately so that the Disciplinary Authority, Appellate Authority and more importantly the Courts will be convinced that the member of the Service has been provided reasonable opportunity of defence.

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5.7 Post Hearing Stage

5.7.1 On completion of production of evidence by both the parties, the Inquiring Authority may either hear the Presenting Officer and the Charged officer on their respective cases or allow them to submit written Briefs thereon.

5.7.2 Thereafter, the Inquiring Authority shall prepare Inquiry Report as required under Rule 8 (24). Needless to add that this report will be based on the records of the case which include the following:

- (a) Charge Memo
- (b) Defence Statement, if any, submitted by the member of the Service under Rule 8(5) (b)
- (c) Documentary evidence produced by both sides
- (d) Oral evidence from the witnesses led by both sides
- (e) Defence Statement submitted by the member of the Service under Rule 8(17)
- (f) Submissions by the parties under Rule 8 (20)

5.7.3 Rule 8(24) requires that the Inquiry Report shall contain the following:

- (a) The articles of charge and the statement of imputations of misconduct or misbehaviour.
- (b) The defence of the member of the Service in respect of each article of charge.
- (c) An assessment of the evidence in respect of each article of charge; and
- (d) The findings on each article of charge and the reasons there for.

5.7.4 Explanation under Rule 8(24) further provides that *"If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of charge, it may record its findings on such article of charge."*

5.7.5 Proviso to Rule 8(24) further mandates that *"the findings on such article of charge shall not be recorded unless the member of the Service has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge."*

5.7.6 The findings in the Inquiry Report are to be based only on the evidence led in the case and no material not forming part of the records of the case or which has not been made available to the member of the Service to enable him to controvert the same, shall be relied upon by the Inquiring Authority.

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5.7.7 On finalisation of the Inquiry Report, the Inquiring Authority shall forward to the Disciplinary Authority

- (a) the Inquiry Report prepared by it as mentioned above.
- (b) the written statement of defence, if any, submitted by the member of the Service.
- (c) the oral and documentary evidence produced during the inquiry
- (d) written briefs, if any, filed by the Presenting Officer or the member of the Service or both during the inquiry; and
- (e) the orders, if any, made by the disciplinary authority and the inquiring authority regarding the inquiry.

5.7.8 Role of the Inquiring Authority culminates on submission of the Inquiry Report. However, the Disciplinary Authority may remit the matter to the Inquiring Authority under Rule 9(1), *“for further inquiry and report, and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 8 as far as may be.”* This aspect is elaborated in Chapter 8 of this Compendium.

5.8 Some General Issues

5.8.1 Change of Inquiring Authority during the Inquiry:

Rule 8 (23) deals with a scenario wherein an Inquiring Authority *“after having heard and recorded the whole or any part of the evidence in an inquiry, ceases to exercise jurisdiction therein and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction.”* The rule provides that under such circumstances, *“the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself”*

5.8.2 Proviso to the above rule further empowers the succeeding Inquiring Authority to recall, examine, cross-examine and re-examine any witness, if it is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice.

5.8.3 Time Period for Inquiry

5.8.3.1 Rule 8(25) mandates that *“The Inquiring Authority should conclude the inquiry and submit his report within a period of six months from the date of receipt of order of his appointment as Inquiring Authority.”* Where it is not possible to adhere to the above time limit, *the Inquiring Authority may record the reasons and seek extension of time from the disciplinary authority in writing, who may allow an additional time not exceeding six months for completion of the inquiry.* Further extension of time for period *“not exceeding six months at a time may be allowed for any good and sufficient*

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reasons to be recorded in writing by the disciplinary authority or any other authority authorised by the disciplinary authority on his behalf”.

5.9 Tasks for Inquiring Authority and Presenting Officer

5.9.1 The Inquiring Authorities and Presenting Officers appointed under Rule 8 of the 1969 Rules perform a variety of tasks. In fact, the choice of Inquiring Authority and Presenting Officer itself calls for considerable prudence and evaluation of number of factors. Some of the major tasks performed by the Inquiring Authority and Presenting Officer are such as the following:

Inquiring Authority

- a) Recording the proceedings – generally in the form of Daily Order Sheets.
- b) Recording deposition of oral witnesses.
- c) Ensuring timely completion of the proceedings despite delay and dilatory tactics of the parties.
- d) Analysis of Evidence and arriving at objective conclusions.
- e) Preparation of Inquiry Report.

Presenting Officer

- a) Organising Inspection of Original documents relied upon by the Disciplinary Authority.
- b) Leading the witnesses on behalf of Disciplinary Authority.
- c) Cross examination of Defence Witnesses.
- d) Re-examination of the witnesses on behalf of the Disciplinary Authority based on the cross examination by the member of the Service/Defence Assistant.
- e) Oral or written submission under Rule 8(20)

5.9.2 Detailed preparatory steps and planning required for discharge of the above functions, skills required for the purpose, etc. are extensively dealt with in the Handbook for Inquiry Officers and Disciplinary Authorities issued by the Institute of Secretariat Training and Management (ISTM). Said Handbook for Inquiry Officers and Disciplinary Authorities is available on the website of the Department of Personnel and Training, Central Vigilance Commission, ISTM, etc. and may be referred to where necessary.

5.10 Conclusion

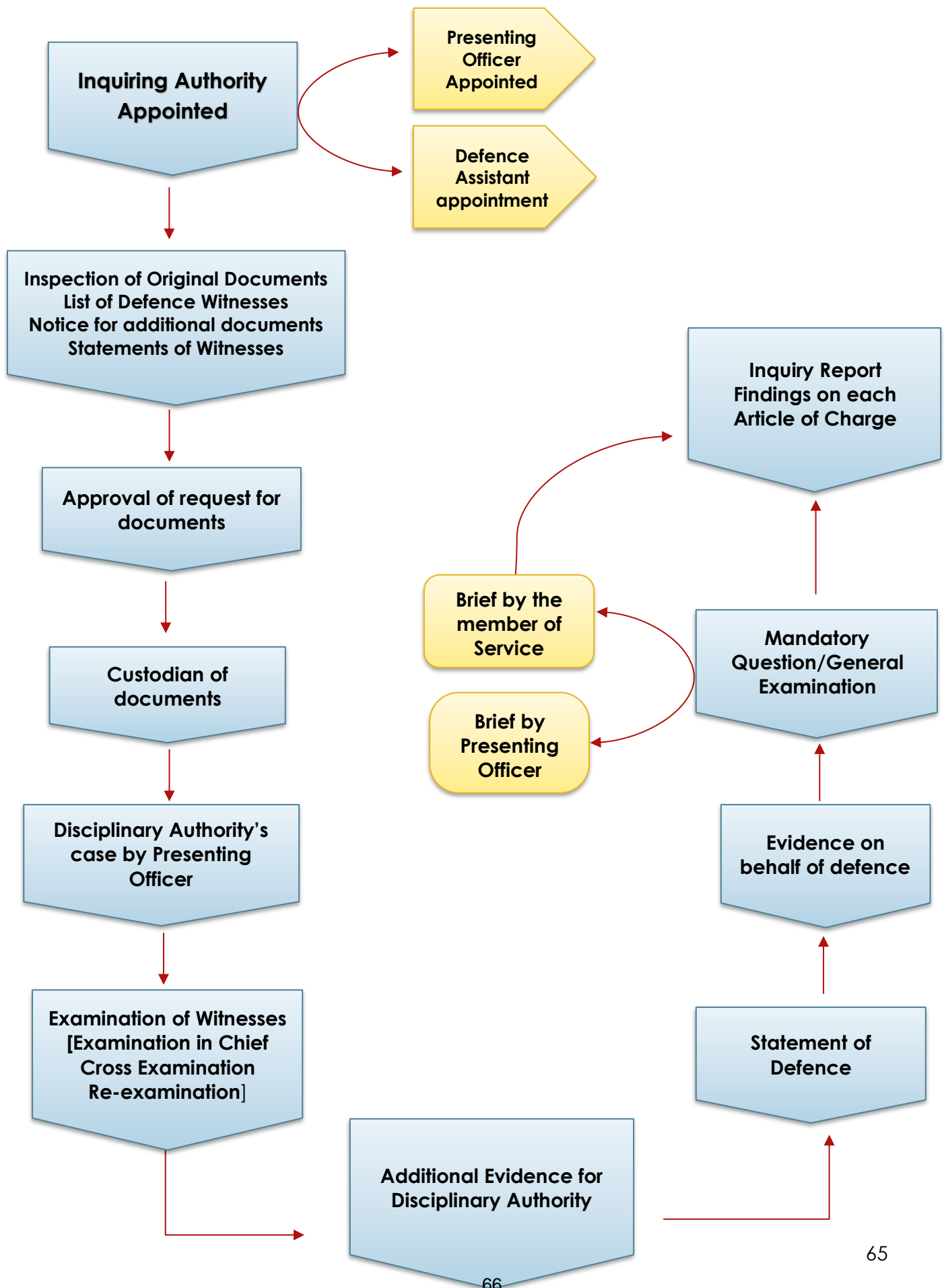
5.10.1 Providing reasonable opportunity to the member of the service, carrying out objective analysis of the evidence leading to logically sustainable conclusions,

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documenting the entire process, adhering to the time limit provided, etc. call for high degree of complex skills. Significantly, the product viz. the Inquiry Report is liable to be subjected to rigorous scrutiny within the organisation and in judicial fora. Most importantly, the outcome of the assignment is likely to have serious impact on the livelihood and reputation of the member of the service.

5.10.2 In view of the forgoing, the task of conduct of inquiry needs to be accorded the requisite priority and importance by the Inquiring Authority as well as the Presenting Officer.

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FLOW CHART OF THE STEPS INVOLVED IN INQUIRY

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS**Checklist for Inquiring Authority**

Role of Inquiring Authority (Commonly referred to as Inquiry Officer or IO) is to help the Disciplinary Authority in ascertaining the truth about the charges leveled against the delinquent employee. For this he has to objectively:

- a) Record the evidence
- b) Analyze the evidence
- c) Record the findings
- d) Submit the report to the disciplinary authority

In order to achieve the above, the IO may keep in mind the following points:

On Receipt of Appointment Order

1. Check if the order has been signed and issued by the correct officer
2. Check if following are enclosed
 - (a) Annexures (i) to (iv) to charge sheet
 - (b) Evidence that charges sheet has been served on charged officer
 - (c) Reply, if any of charged officer
 - (d) Appointment order of presenting officer
3. See if charges as stated in Annexure (i) are clear, unambiguous and emphatic. – If not bring it to the notice of disciplinary authority
4. Make a daily order sheet mentioning receipt of appointment order
5. Get hold of procedure for holding inquiry in a disciplinary case (Rule 8 of AIS Rules, 1969) if not already familiar with. In case of doubt consult a colleague, who has sufficient experience in this area.
6. Fix a date for preliminary hearing after 10 days and issue notice.
7. Ascertain if presenting officer is a legal practitioner.
8. Inform the charged officer in notice at S.No. 7 as mentioned of the above, that as per rules he can avail the services of a fellow government servant or retired government servant as 'Defence Assistant'. In case presenting officer is a legal practitioner even a legal practitioner can be hired as Defence Assistant.

During Preliminary Hearing

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9. Arrange for a separate room and steno so that proceedings could be recorded. Ensure that there is no outside disturbance
10. Receive the charged officer and his Defence Assistant, if any, warmly. There is no need to be officious or rigid. It only hampers smooth conduct of proceedings.
11. In case charged officer has appeared along with a Defence Assistant, ask about his particulars i.e., name, designation, and office, no. of inquiries in hand, whether legal practitioner etc.
12. Ask the charged officer to state in clear terms whether he has any objection to you being the inquiry officer – clear the issue of bias.
13. In case charged officer has any objection – stay the proceeding and ask him to make a representation in writing to the revisionary authority and await his decision.
14. In case charged officer expresses confidence in you, proceed further and ask him - whether he
 - (A) Has received charge sheet
 - (B) Has understood the charge(s)
 - (C) Admit the charge(s)

Remember. admission, if any must be unqualified and unconditional. Otherwise, it is to be treated as denial. Charges admitted are deemed to have been proved. Further inquiry is to be conducted only in respect of charges not admitted.

15. If all the charges are admitted record the same, get it signed and forward finding of guilt.
16. Fix a time schedule for inspection of listed documents within 5 days, extendable by maximum 5 days.
17. Fix a time schedule for submission of list of additional documents together with their particulars of custodian, and relevance and list of Defence witnesses - 10 days extendable by maximum 10 days.
18. On receipt of list of additional documents / witnesses – consider their relevance from Defence point of view. Be empathetic and positive. Think, “what is the harm in allowing” instead of “why should it be allowed”. Do not allow documents which you consider irrelevant.
19. Write to custodian of additional document(s) to provide the document direct to you.
Do not entrust this task to presenting officer.

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20. Arrange inspection of additional document by charged officer and presenting officer – provide copies to both where possible.
21. Prepare a daily order sheet. Giving details of action taken. Remember daily order sheet is a vital document. It tells whether requisite procedure is being followed.
22. In case charged officer asks for pre-recorded statements of state witnesses and the same are available, ask presenting officer to provide. Allow clear 3 days' gap between supply of statements and examination of witness concerned.

During Regular Hearing

23. Take undisputed documents on record and mark them as state exhibits (SE1, SE2, etc.) or defence exhibits (DE1, DE2, etc.). Obtain signatures of PO and CO on the documents being taken on record. Disputed documents must be produced through a witness.
24. Ask the presenting officer to conduct examination in chief of state/management witnesses.
25. Be alert. Seek clarifications from witness wherever necessary.
26. Permit cross examination by charged officer/defence assistant. **If no questions are asked in cross examination, mention in daily order sheet that the charged officer did not avail the opportunity.**
27. During cross examination do not permit questions which are scandalous, or which aim at solely annoying the witness. Ensure that due respect is given to witness.
28. Permit re-examination only on those points, which have come up during cross examination.
29. Carefully watch and keep a note of the demeanour of witness. This will facilitate in drawing conclusion if he is trust-worthy or not.
30. Before the close of prosecution case, the presenting officer may ask for production of additional document/witness. If such a request is made carefully consider.
 - (a) Nature of evidence to be adduced
 - (b) Purpose of evidence
 - (c) Why it was not included earlier at the time of drawing the charge sheet
 - (d) Is it vital to reach the truth?

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- (e) Is it in filling in the gaps in the evidence already led – if yes, do not allow?
- (f) Hear views of charged officer to the request made by presenting officer
- (g) Whether introduction of new evidence facilitate justice

31. If you consider introduction of new evidence will facilitate justice permit it and treat it like any other piece of evidence.

32. Record reasons in daily order sheet for allowing new evidence

33. After close of prosecution's case, ask charged officer to state his defence. tell him that he is at liberty to be his own witness.

34. Allow charged officer to conduct examination in chief of defence witness, if any. Permit cross examination by presenting officer and re-examination by charged officer.

35. Make daily order sheet for each day and obtain signature of presenting officer and charged officer/defence assistant. Give them copy of daily order sheet.

36. After close of defence case, question the charged officer generally on the circumstance appearing against him. This requirement is mandatory when charged officer has not examined himself as witness.

37. Ask the charged officer specifically whether he is satisfied with the proceedings and whether he wants to say something more.

38. Throughout the proceedings demonstrate objectivity and unbiased/impartial attitude. Allow all reasonable requests. Reject firmly all unreasonable requests/obstructions by either party.

39. After closing case of both the parties, ask presenting officer to submit his brief in a reasonable time say, one week with a copy to charged officer against signature.

40. Ask charged officer to file reply to presenting officer's brief within reasonable time.

41. As far as possible conduct regular hearing on day-to-day basis. Allow adjournments only when inescapable.

42. Carefully segregate daily order sheets, record statements of witnesses, documents on record and correspondence in sequential order in separate folders.

Ex-Parte Inquiry

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43. In all notices, please make clear that if charged officer fails to appear before you on the date fixed for hearing without valid cause and pre-intimation, proceedings will be held ex-parte.
44. Before commencing ex-parte inquiry, check whether:
- CO is not on sanctioned leave
 - Subsistence allowance is being paid to the co if he is under suspension
45. In ex-parte proceedings follow all steps as if charged officer is participating – less cross examination.
46. Send copies of daily order sheet and proceedings to charged officer by registered post.
47. Permit charged officer to participate in later proceedings if he so desires.
48. If CO shows satisfactory reasons for his non-participation in earlier hearings and requests for recalling a witness, decide on merit.
49. Remember your aim is to find out the truth. During ex-parte you must be extra vigilant.

Evaluation of Evidence

- 50.
- Read the charges carefully
 - Break them into sequential steps (links)
 - Determine facts which are necessary to prove each link. In other words, frame issues/questions which must be answered to prove a given fact.
 - Carefully scan undisputed documentary evidence and link it with facts in issue
 - Examine record of examination in chief, cross examination relating to disputed document(s) and determine how much reliance can be placed on it
 - You have already observed demeanour of witnesses, who appeared before you. To assess their reliability consider
 - Their involvement and interest in the outcome of the case
 - Were they present on the scene of occurrence?
 - Have they come to know the details through someone; how reliable is that source?
 - During examination in chief were they repeating the story mechanically?
 - What is the general reputation of witness?
 - What is his background

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51. Answer to above questions will enable you assess to what extent the witness is reliable
52. Marshall all reliable evidence and link it to facts which you consider necessary to be proved.
53. Link proved facts to charge and give your finding based on pre-ponderance of probability
54. Write your report and submit to disciplinary authority at least in triplicate together with folders mentioned at S. No.42.

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TASK LIST FOR PRESENTING OFFICER

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 preliminary 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 about 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

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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 carefully 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 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

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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(s) 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

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 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

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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 is 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

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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 demeanour 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 a debate with the witness
71. Do not show your emotions; do not 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

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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

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CHAPTER-6

SPECIAL CASES OR CIRCUMSTANCES

In this chapter, the following aspects are covered:

- I. Special procedure in certain cases
- II. Common proceedings
- III. Ex-parte proceedings
- IV. Simultaneous/ Parallel proceedings
- V. Borrowed and lent officers

I. **SPECIAL PROCEDURE IN CERTAIN CASES**

6.1 Introduction

6.1.1 Article 311 (2) of the Constitution of India provides that *no person who is a member of a civil service of the Union or an All India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges*. We have seen in Chapter 1 of this Compendium that the Second Proviso to Article 311 (2) lays down three extraordinary circumstances when the protection granted by Article 311 (2) is NOT available.

6.1.2 Rule 14 of the 1969 Rules grants power to the disciplinary authority to dispense with inquiry and impose penalty under the same three conditions enumerated in the Second Proviso to Article 311 (2). The Rule is extracted hereunder for ease of reference:

“14. Special procedure in certain cases— *Notwithstanding anything contained in rules 8 to 12 of All India Service Rules, 1969—*

- I. Where any penalty is imposed on a member of the Service 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 if, 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 an 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;*

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Provided that the member of the Service may be given an opportunity of making a representation on the penalty proposed to be imposed before any order is made in a case under clause (i) of this rule:

Provided further that except in cases where consultation with the Union Public Service Commission is not necessary in accordance with the provisions of the Union Public Service Commission (Exemption from Consultation) Regulations, 1958, the Union Public Service Commission shall be consulted before any order is made in any case under this rule.”

6.1.3 Two things are significant about the special procedure laid down in Rule 14 of the 1969 Rules. Firstly, it has overriding powers. This is evident from the non-obstante clause “*Notwithstanding anything contained in rules 8 to 12*”. Secondly, two provisos to Rule 14, impose the following two pre-conditions for invoking the powers under this Rule viz.

- (i) Member of the Service may be given an opportunity of making a representation on the penalty proposed to be imposed and
- (ii) Union Public Service Commission shall be consulted unless exempt by Exemption from Consultation Regulations, 1958

6.1.4 One basic question that comes to mind is whether the above course of action would amount to violation of the Principles of Natural Justice. Answer is that the Principles of Natural justice can be exempt by specific provisions of law or by necessary implications. It is well settled that codified law will prevail over the Principles of Natural Justice. This aspect has been eloquently elaborated in the Constitution Bench judgment in *Union of India Vs. Tulsi Ram Patel* [1985 AIR 1416; 1985 SCR Supl. (2) 131; 1985 SCC (3) 398; 1985 SCALE (2)133]

6.1.5 Procedural aspects to be taken care of while invoking the powers under Rule 14 of the 1969 Rules are discussed in this section.

6.2 When Penalty is imposed on ‘*the ground of conduct which has led to his conviction on a criminal charge*’

6.2.1 This provision is invoked only after the conviction of the member of the service on a criminal charge. Needless to add that the delinquent would have availed reasonable opportunity in the criminal proceedings. Besides, the standard of proof in a criminal trial is proof beyond reasonable doubt, as against the standard of *preponderance of probability* in the departmental proceedings. Hence, the delinquent can have no grievance of having been punished without providing adequate opportunity of defence. In fact, only an empty formality has been dispensed with – that

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too after providing opportunity of making representation, contents of which will be taken into consideration while passing final orders.

6.2.2 While invoking this provision, the following note of caution sounded by the Hon'ble Supreme Court needs to be borne in mind:

“Clause (a) of the second proviso to Article 311 (2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But, that power, like every other power must be exercised fairly, justly and reasonably. The Constitution does not contemplate that a government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service.”⁵⁴

6.3 When it is ‘Not Reasonably practicable to hold an inquiry’

6.3.1 On the face of it, this provision appears to vest arbitrary power on the Disciplinary Authority. Only restriction on the Disciplinary Authority while invoking the power under Rule 14(ii) is that the authority must be satisfied ‘for reasons to be recorded in writing’. An apprehension was expressed by the employees’ side, inter alia that this provision is capable of being misused. However, the validity of identically worded corresponding provisions in several Service Rules have been upheld by the Apex court in *Union of India Vs. Tulsi Ram Patel* (supra).

6.3.2 Disciplinary Authorities must bear in mind that recourse to the special provision for imposing penalty without conduct of Inquiry, is to be had only under extraordinary circumstances. In *Prithipal Singh Vs. State of Punjab & Ors*, Hon'ble Supreme Court has held that *“Holding of a departmental proceeding is the rule. The 2nd Proviso appended to Article 311(2) of the Constitution of India provides for an exception. It is a trite law that existence of such an exceptional situation must be shown to exist based on relevant materials.”⁵⁵*

6.3.3 Disciplinary Authorities are often confronted with the question: What are the circumstances when it is ‘not reasonably practicable to hold an inquiry’? The following observations of the Hon'ble Supreme Court in *Union of India and anr. Vs. Tulsiram Patel and others*, 1985 SCC (3) 398, explaining the scope of clause (b) of Article 311 (2) may be kept in mind while invoking powers for dispensing with inquiry under Rule 14 (ii) of 1969 Rules: -

The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that “it is not reasonably practicable to hold” the inquiry contemplated by clause (2) of [Article 311](#). What is pertinent to note is that the

⁵⁴Shanker Dass Vs. Union of India 1985 AIR 772 1985 SCR (3) 163 1985 SCC (2) 358 1985 SCALE (1)391

⁵⁵Prithipal Singh Vs. State of Punjab & Ors [(2006) 13 SCC 314]

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words used are “not reasonably practicable” and not “impracticable”. According to the Oxford English Dictionary “practicable” means “Capable of being put into practice, carried out in action, effected, accomplished or done; feasible”. Webster's Third New International Dictionary defines the word “practicable” *inter alia* as meaning “possible to practice or perform: capable of being put into practice, done or accomplished: feasible”. Webster's Third New International Dictionary defines the word “reasonably” as “in a reasonable manner: to a fairly sufficient extent”. Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline an insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonably practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of [Article 311](#) makes the decision of the disciplinary authority on this question final. A 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 government servant is weak and must fail. The finality given to the decision of the disciplinary authority by [Article 311 \(3\)](#) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty.”

6.3.4 Another condition precedent for invoking the powers under Rule 14 (ii) of the 1969 Rules is the recording the reasons. As stated by the Hon'ble Supreme Court:

"The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its

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*reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by [Article 311 \(2\)](#). This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following there-upon would both be void and unconstitutional."*⁵⁶

6.3.5 At times, authorities may be inclined to hold "it is not reasonably practicable to hold inquiry" because the delinquent official is not traceable. Under such circumstances, ex-parte inquiry may be the appropriate option, rather than dispensing with inquiry altogether.

6.4 Where the President is satisfied that, in the interest of the security of the State, it is not expedient to hold an inquiry

6.4.1 The above special provision has been enacted to meet the extra-ordinary circumstances involving the security of the country. It is significant to note that there is marked difference between the pre-condition mentioned in Rule 14 (ii) and (14 (iii). Corresponding difference between clauses (b) and (c) of second proviso to Article 311(2) has been highlighted by the Hon'ble Supreme Court in [Union of India v. M.M. Sharma](#), (2011) 11 SCC 293, as under:

"18. It should also be pointed out at this stage that sub-clause (b) of the second proviso to [Article 311\(2\)](#) of the Constitution of India mandates that in case the disciplinary authority feels and decides that it is not reasonably practical to hold an inquiry against the delinquent officer the reasons for such satisfaction must be recorded in writing before an action is taken. Sub-clause (c) of the second proviso to [Article 311\(2\)](#) on the other hand does not specifically prescribe for recording of such reasons for the satisfaction but at the same time there must be records to indicate that there are sufficient and cogent reasons for dispensing with the enquiry in the interest of the security of the State. Unless and until such satisfaction, based on reasonable and cogent grounds is recorded it would not be possible for the court or the Tribunal, where such legality of an order is challenged, to ascertain as to whether such an order passed in the interest of the security of the State is based on reasons and is not arbitrary. When such an order is challenged in the court of law the competent authority would have to satisfy the court that the competent authority has sufficient materials on record to dispense with the enquiry in the interest of the security of the State."

6.4.2 It is also significant that in cases of this nature, there is no need to disclose the reasons for arriving at the satisfaction of the President for dispensing with inquiry, nor

⁵⁶Union of India and Anr. Vs. Tulsiram Patel and others; 1985 SCC (3) 398,

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to communicate the charge or the reasons for imposing the extreme penalty, as clarified by the Hon'ble Supreme Court in the above judgment involving the case of dismissal of the First Secretary in an Embassy:

"24. While no reason for arriving at the satisfaction of the President or the Governor to dispense with the enquiry in the interest of the security of the State is required to be disclosed in the order, we cannot hold that, in such a situation, the impugned order passed against the respondent should mandatorily disclose the reasons for acting of dismissal of his service and not any other penalty.

*25. If in terms of the mandate of the Constitution, the communication of the charge and holding of an enquiry could be dispensed with, in view of the interest involving security of the State, there is equally for the same reasons no necessity of communicating the reasons for arriving at the satisfaction as to why the extreme penalty of dismissal is imposed on the delinquent officer."*⁵⁷

6.4.3 Needless to add, Presidential approval is a constitutional requirement in cases falling under 14 (iii) of the 1969 Rules and there can be no compromise in this regard.

6.5 In view of the foregoing, before initiating action under Rule 8 of the 1969 Rules, it would be appropriate for the authorities concerned to examine whether the case falls under any of the extraordinary circumstances enumerated in Rule 14. If so, the pre-conditions for application of Rule 14 under the respective sub-rule as well as both the provisos need to be ensured while dealing with the cases under Rule 14 of the 1969 Rules.

II. COMMON PROCEEDINGS

6.6 Rule 13 of the **All India Services (Discipline and Appeal) Rules, 1969** reads as follows:

Common proceeding. — Where two or more members of the Service are concerned in any case, the Government may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

6.7 Procedures to be followed:

6.7.1 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 the accused Government servants may make an order directing that disciplinary action against all of them be taken in a common proceeding. If the

⁵⁷ [Union of India v. M.M. Sharma](#), (2011) 11 SCC 293

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authorities competent to impose the penalty of dismissal from service on such Government servants are different, an order for common proceedings may be made by the highest of such authorities with the consent of the others.

6.7.2 Such an order should specify: (i) the authority which may function as the Disciplinary Authority for the purpose of such common proceedings; (ii) the penalties which such Disciplinary Authority will be competent to impose; (iii) whether the proceedings shall be initiated as for a major penalty or for a minor penalty. (7.6.1 CVC VM, 2021)

6.7.3 If the alleged misconduct has been committed jointly by person who has retired from Government service and a person who is still in service, **common proceedings against them cannot be started**. Proceedings against the retired person will be held under Rule 8(2) (a) of the CCS (Pension) Rules, 1972 and against the persons in service under Rule 8 of the AIS (D&A) Rules, 1969. The oral inquiry against both could, however, be entrusted to the same Inquiring Authority. (7.6.2, CVC VM, 2021)

6.7.4 A joint proceeding against the accused and accuser is an irregularity which should be avoided. (7.6.3, CVC VM, 2021)

6.7.5 It may also happen that two or more Government servants governed by different disciplinary rules may be concerned in a case. In such cases, **proceedings will have to be instituted separately in accordance with the rules applicable to each of the Government servant concerned**. (7.6.4, CVC VM, 2021)

6.7.6 Appeals against orders issued in common proceedings will lie to the authority to which the authority functioning as a Disciplinary Authority for the purpose of such proceedings is immediately subordinate provided that where such authority is subordinate to the President in respect of a government servant for whom President is the Appellate Authority, the appeal will lie to the President. In cases where the authority after making an order becomes the Appellate Authority by virtue of his subsequent appointment or otherwise, appeal shall lie to the authority to which such an authority is immediately subordinate. (7.35.2, CVC VM, 2021)

6.7.7 If common inquiry had been ordered when all the co-accused were in service and if one of them retires before the completion of the inquiry, the proceedings can be continued under Rule 8 (2) (a) of the CCS (Pension) Rules, 1972. It is not necessary to split up the enquiries the moment one of the officers retires. On receipt of the report of Inquiring Authority, the Disciplinary Authority can straightaway impose a punishment on the officers in service. But he will have to submit his findings to the Government in respect of the retired officer. (7.41.5, CVC VM, 2021)

6.8 When two Government Servants accuse each other

6.8.1 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 about the procedure to be adopted in such cases. The general

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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 quick succession 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 avoided⁵⁸.

6.8.2 A joint proceeding against government servants working in the same office who made complaint against each other should be avoided.

III. SIMULTANEOUS/PARALLEL PROCEEDINGS

6.9.1 Department of Personnel & Training clarified⁵⁹ on conduct of simultaneous criminal and departmental proceedings as follows:

“It is noticed that in many cases charge sheets are not issued despite clear prima facie evidence of misconduct on the ground that the matter is under investigation by an investigating agency like Central Bureau of Investigation. In the aforesaid judgement the Hon'ble Court has also superseded the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance.”

6.9.2 In the subsequent paras the position as regards the following issues has been clarified:

- i. Issue of charge sheet against an officer against whom an investigating agency is conducting investigation or against whom a charge sheet has been filed in a court.
- ii. Effect of acquittal in a criminal case on departmental inquiry.
- iii. Action where an employee convicted by a court, files an appeal in a higher court.

6.9.3 Issue of charge sheet against an officer against whom an investigating agency is conducting investigation or against whom a charge sheet has been filed in a court

6.9.4 It has been reaffirmed in a catena of cases that there is no bar in law for initiation of simultaneous criminal and departmental proceedings on the same set of allegations. In *State of Rajasthan vs. B.K. Meena & Ors.*⁶⁰, the Hon'ble Supreme Court has emphasised the need for initiating departmental proceedings in such cases in these words:

⁵⁸ MHA Letter No. 6/98/63-AVD dated 13th June 1963

⁵⁹ O.M. F.No.11012/6/2007-Estt (A-III) dated 21.07.2016

⁶⁰ (1996) 6 SCC 417 AIR 1997 SC ,13 1997(1) LLJ 746 (SC)

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“It must be remembered that interests of administration demand that the undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings”.

6.9.5 In *Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr.*, (1999) 3 SCC 679, the Supreme Court observed that departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

Effect of acquittal in a criminal case on departmental inquiry

6.9.6 The question as to what is to be done in the case of acquittal in a criminal case has been answered by the Hon'ble Supreme Court in *R.P. Kapur vs. Union of India & Anr.* AIR 1964 SC 787 (a five Judge bench judgement) as follows:

If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted. Even in case of acquittal proceedings may follow where the acquittal is other than honourable.

6.9.7 The issue was explained in the following words by the Hon'ble Supreme Court in the following words in *Ajit Kumar Nag Vs. G M, (PJ), Indian Oil Corporation Ltd.*, (2005) 7 SCC 764:

“Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the

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prosecution and unless the prosecution can prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded based on 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation."

6.9.8. The judgement of the Hon'ble Supreme Court in *G.M. Tank vs State of Gujarat (2006) 5 SCC 446* has reaffirmed the principles laid down in *R.P. Kapur (supra)*. In *G.M. Tank* case, Court observed that there was not an iota of evidence against the appellant to hold that he was guilty. As the criminal case and the departmental proceedings were based on identical set of facts and evidence, the Court set aside the penalty imposed in the departmental inquiry also.

6.9.9 Ratio in the *G.M. Tank judgement* should not be misconstrued to mean that no departmental proceedings are permissible in all cases of acquittal or that in such cases the penalty already imposed would have to be set aside. What the Hon'ble Court has held that no departmental inquiry would be permissible when the evidence clearly establishes that no charges against the Government servant are made out.

Action where an employee convicted by a court, files an appeal in a higher court

6.9.10 In many cases, Government servants who have been found guilty by lower courts and have filed appeals in higher courts represent for reinstatement/ setting aside the penalty imposed under Rule 14(i) of the AIS (D&A) Rules, 1969. In such cases, the following observations of the Hon'ble Supreme Court in *K.C. Sareen vs C.B.I., Chandigarh, (6) SCC 584* are to be kept in view:

"When a public servant was found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public interest which suffers and sometimes even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office it impairs the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants

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are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction the fall out would be one of shaking the system itself.”

6.9.11 Thus action against a convicted Government servant should be taken straight away under Rule 14(i) of 1969, Rules. An appeal against the conviction or even a stay on the sentence will have no effect unless the conviction itself is stayed.

6.9.12 In view of the law laid down in various judgements, including the ones quoted above, in cases of serious charges of misconduct, particularly involving moral turpitude, the Ministries/Departments should keep the following points in view to take prompt action:

- (i) All incriminating documents should be seized promptly to avoid their tempering or destruction of evidence.
- (ii) Care needs to be taken for retention of copies of such documents while handing over the same to an investigating agency. These documents may be attested after comparison with the originals.
- (iii) In case the documents have been filed in a court, certified copies of documents may be obtained.
- (iv) Documents and other evidence must be examined to see whether any misconduct, including favour, harassment, negligence or violation of rules/instructions has been committed. If there is a prima facie evidence of misconduct, charge sheet under the appropriate rule must be issued.
- (v) Court judgements should be promptly acted upon:
 - (a) In cases of conviction action is to be taken under Rule 14 (i) of the AIS (D&A) Rules, 1969.
 - (b) in cases of acquittal also, if the Court has not acquitted the accused honourably, charge sheet may be issued.
 - (c) an acquittal on technical grounds or where a benefit of doubt has been given to the accused will have no effect on a penalty imposed under AIS (D&A), 1969 as while in a criminal trial the charge must be proved beyond reasonable doubt, in the departmental inquiry the standard of evidence is preponderance of probability.
- (vi) An appeal by the accused against conviction, but where the conviction has not been overturned/ stayed, will have no effect on if action taken under Rule 14(i)

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of the AIS (D&A) Rules, 1969, even Court has directed stay/ suspension of the sentence.

6.9.13 Vigilance Manual, 2021 on simultaneous action in respect of preliminary investigation:

“PARALLEL INVESTIGATION BY DEPARTMENTAL VIGILANCE AGENCY AND THE CBI

Once a case has been referred to and taken up by the CBI for investigation, further investigation should be left to them and a parallel investigation by the Departmental agencies should be avoided. Further action by the Department in such matters should be taken on completion of investigation by the CBI based on their report. However, if the Departmental proceedings have already been initiated based on investigations conducted by the Departmental agencies, the administrative authorities may proceed with such Departmental proceedings. In such cases, it would not be necessary for the CBI to investigate those allegations, which are the subject matter of the Departmental inquiry proceedings, unless the CBI apprehends criminal misconduct on the part of the official(s) concerned. Further, the guidelines issued by DoPT vide OM No. 11012/6/2007-Estt (A-III) dated 21.07.2016 and CVC Circular No. 99/VGL/87 dated 30.09.2005 may also be kept in view.

Instances have come to the notice of the Commission that while CBI is investigating allegations made in a complaint against a public servant on issues involving criminal misconduct, the concerned organisation does not take up investigation into other misconducts contained either in the same complaint or in other complaints which are of departmental nature, pending investigation by CBI. It is to be clarified that the concerned organisation shall enquire / investigate on issues which are not being investigated by CBI and take the matter to logical conclusion as per laid down procedure. Further, if CBI is investigating criminal misconduct by a bank employee or a borrower relating to some loan / fraud / forging of accounts, etc., the bank must not wait for CBI to complete its investigation to initiate action for recovery.”

6.9.14 Discussion on simultaneous proceedings as in Vigilance Manual, 2021 is given in the following paras:

Prosecution should be the general rule in all cases which are found fit to be sent to Court after investigation and in which the offences are of bribery, corruption or other criminal misconduct involving loss of substantial public funds. In other cases, involving less serious offences or involving malpractices of a Departmental nature, Departmental action only should be taken, and the question of prosecution should generally not arise. Whenever there is a

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difference of opinion between the Department and the CBI whether prosecution should be resorted to in the first instance, the matter should be referred to the CVC for advice. (MHA O.M No. 39/8/64-Ests (A) dated 04.09.1964 regarding prosecution or Departmental action according to seriousness of the offence in the cases of bribery, corruption or other criminal misconduct). (7.8.1, CVC VM, 2021)

There is no legal bar to the initiation of Departmental disciplinary action under the rules applicable to the delinquent public servant where criminal prosecution is already in progress and generally there should be no apprehension of the outcome of the one affecting the other, because the ingredients of delinquency / misconduct in criminal prosecution and Departmental proceedings, as well as the standards of proof required in both cases are not identical. In criminal cases, the proof required for conviction must be beyond reasonable doubt, whereas in Departmental proceedings, proof based on preponderance of probability is sufficient for holding the charges as proved. What might, however, affect the outcome of the subsequent proceedings may be the contradictions which the witnesses may make in their depositions in the said proceedings. It is, therefore, necessary that all relevant matters be considered in each individual case and a conscious view taken whether disciplinary proceedings may not be started alongside criminal prosecution. In a case where the charges are serious and the evidence strong enough, simultaneous Departmental proceedings should be instituted so that a speedy decision is obtained on the misconduct of the public servant and a final decision can be taken about his further continuance in employment. (CVC Circular No. 1K/DSP/3 dated 03.02.1981 regarding starting of Departmental proceedings along with prosecution). (7.8.2, CVC VM, 2021)

The Supreme Court in the case of Delhi Cloth and General Mills Ltd. vs. Kushal Bhan (AIR 1960 SC 806) observed that it cannot be said that "principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee". They however, added that "if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to wait the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced". (7.8.3, CVC VM, 2021)

Should the decision of the Court lead to acquittal of the accused, it may be necessary to review the decision taken earlier as a result of the Departmental proceedings. A consideration to be considered in such review would be whether the legal proceedings and the Departmental proceedings covered precisely the same grounds. If they did not, and the legal proceedings related only to one or two charges i.e., not the entire field of Departmental proceedings, it may not be found necessary to alter the decisions already taken. Moreover, while the Court

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may have held that the facts of the case did not amount to an offence under the law, it may well be that the Competent Authority in the Departmental proceedings might hold that the public servant was guilty of a Departmental misdemeanour, and he had not behaved in the manner in which a person of his position was expected to behave. (7.8.4, CVC VM, 2021)

The most opportune time for considering the question whether Departmental action should be initiated simultaneously is when the prosecution is sanctioned. At that stage, all the documents are available and taking Photostat copies or producing the originals before the Inquiring Authority is not a problem. Once the originals have been admitted by the Charged Officer, the Photostat copies duly attested by the Inquiring Officer and / or the Charged Officer could be utilised for further processing the Departmental proceedings, as the originals would be required in Court proceedings. (DoPT OM No. 11012/6/2007-Estt A, dated 01.08.2007 regarding simultaneous action of prosecution in a court and initiation of Departmental proceedings). (7.8.5, CVC VM, 2021)

IV. EX-PARTE PROCEEDINGS

6.10.1 An inquiry in which the charged officer is not represented is known as Ex- parte inquiry.

6.10.2 Rule 8(21) of All India Services (Discipline and Appeal) Rules, 1969 provides as follows:

If the member of the Service, to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex-parte.

6.10.3 As may be seen from the above extracted provision of the Rule, ex-parte inquiry can be resorted to only when the following conditions are satisfied:

- a) Articles of charge should have been delivered
- b) The charged officer had failed to submit the written statement of defence on or before the specified date or
- c) Does not appear in person before the Inquiring Authority or
- d) Fails or refuses to comply with the provisions of the AIS (D & A) Rules, 1969

6.10.4 Ex-parte inquiry is not equivalent to dispensing with inquiry. The major differences between the two are as follows: -

S.No.	Ex-parte Inquiry under Rule 8 (21) of AIS (D A) Rules, 1969	Inquiry dispensed with under Rule 14 (ii) of AIS (D & A) Rules, 1969
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(i)	Decision is taken by the Inquiring Authority	Decision is taken by the Disciplinary Authority
(ii)	There is no statutory requirement of recording any reasons as to why inquiry is to be held ex-parte	There is a statutory mandate to record reasons as to why it is not reasonably practicable to hold an inquiry in the manner provided in the rules
(iii)	Conditions precedent specified in rule 8 (21) must be satisfied	No conditions are prescribed in the Rules; Disciplinary Authority must record the reason as to why it is not reasonably practicable to hold the inquiry in the manner provided in the Rules
(iv)	During ex-parte Inquiry, the Charges need to be proved by leading evidence on behalf of the Disciplinary Authority	When inquiry is dispensed with, there is no question of leading evidence or establishing that the charge is proved. It is for the disciplinary authority to consider the evidence on record and pass a reasoned order imposing penalty
(v)	There is scope for the Charged Officer turning up later and seeking to participate in the ex-parte inquiry	Once inquiry is dispensed with, the Charged Officer has no right to seek participation in the Inquiry
(vi)	There is a possibility that the inquiry may not result in any charge being established	The process will end in imposition of penalty

6.10.5 Precautions to be taken by Inquiry Authority before resorting to ex-parte inquiry: -

- a) Before proceeding ex-parte, Inquiring Authority must ensure that communications are being sent to the correct address of the Charged Officer.
- b) It must be ensured that sufficient time is being provided for attending the inquiry, with due regard to the travel arrangement between the place of the inquiry and place of posting or residence of the Charged Officer.
- c) The Inquiring Authority must ensure that the Charged officer is not on sanctioned medical leave or on any official assignment.
- d) If the Charged Officer is under suspension, Inquiring Authority must check whether the non-attendance is attributable to the non-payment of subsistence allowance.
- e) Whether the Charged Officer has been warned that continued absence would result in the proceedings being conducted ex-parte.

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- f) Where the CO or PO do not co-operate in the manner of attendance, production of documents, witnesses, etc., Inquiry Authority may after affording reasonable opportunity, proceed to give a report ex-parte based on facts, documents, witnesses produced before him.

6.10.6 During ex-parte inquiry the following actions are to be taken care of:

- a) In ex-parte proceeding the full inquiry must be held i.e., the Presenting Officer will produce documentary evidence and witnesses in the manner outlined in elsewhere in this compendium.
- b) Notice of each hearing should be sent to the Government servant also.
- c) If the CO joins the proceedings at a later stage, he cannot be prevented from doing so.
- d) While conducting ex-parte proceedings, it would be a good practice to dispatch the copies of the DOS to the delinquent official. This action will manifest the bonafide of the authorities, in case the delinquent official alleges denial of reasonable opportunity, bias, malafide, etc.

6.10.7 For cases where the charged officer seeks adjournment on medical ground without producing medical certificate, judgement in the case of *Union of India Vs. I S Singh [1994 SCC Supl. (2) 518]* is relevant. In such a situation, the Inquiring Authority should either ask for a copy of the medical certificate or in case of doubt, direct the charged officer to get examined by a medical officer. Taking recourse to ex-parte inquiry would amount to violation of the principle of natural justice. The following extract is from the said judgement:

“So far as the second ground is concerned, a few facts need be stated. An inquiry was held, in the first instance, which was not found to be in order by the disciplinary authority who directed a fresh inquiry. When notices were issued in the second inquiry, they could not be served on the respondent. On a later date, the respondent sent an application stating that he is suffering from unsoundness of mind and that the inquiry may be postponed till he regains his mental health. The respondent also states that he sent his medical certificate along with his application. (Indeed, according to him, he sent not one but three letters to the said effect.) The report of the Enquiry Officer, however, does not show that he paid any attention to these letters. If, indeed, the letters were not accompanied by medical certificates, as is now asserted by Shri Mahajan, learned counsel for the appellants, the proper course for the Enquiry Officer was to have called upon the respondent either to produce a medical certificate or to direct him to be examined by a medical officer specified by him. The inquiry report does not even refer to the request contained in the said application nor does it mention why and for what reasons did he ignore the said plea of the respondent. The Enquiry Officer proceeded ex parte, despite the said letters

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and made his recommendation on the basis of which the aforesaid penalty was imposed. It is evident from the facts stated above that the Enquiry Officer has not only conducted the inquiry in a manner contrary to the procedure prescribed by Rule 14(2) of CCS (CCA) Rules but also in violation of the principles of natural justice”.

V. BORROWED AND LENT OFFICERS

6.11.1 It is common knowledge that all Civil Servants, including the All India Services Officers, go on deputations from Central Government to State Government and vice versa; and from Government to Public Sector Undertakings. To maintain sufficient administrative control over the officers while they are on deputation, a two-fold authority is maintained across all Conduct, Discipline and Appeal Rules. That is, for the purpose of disciplinary control, the borrowed and lent officers are covered by two sets CDA rules. However, the parent authority (Lending authority) holds the power of imposing penalties such as dismissal, removal or compulsory retirement and the borrowing authority, other penalties, subject to Rule 7 (2) of AIS (Discipline and Appeal) Rules, 1969.

6.11.2 The rule further provides that penalty of dismissal, removal or compulsory retirement shall not be imposed on a member of the Service except by an order of the Central Government.

6.11.3 In cases where the punishing Government is not the Government on whose cadre the member is borne, the latter Government shall be consulted before any penalty is imposed. However, in respect of the members of the Service borne on a Joint Cadre, the punishing Government shall consult the Joint Cadre Authority.

Further, where the Government concerned are the Central Government and the State Government or two State Governments and there is a difference of opinion between the said Government in respect of any matter referred to in this rule, the matter shall be referred to the Central Government for its decisions, which shall be passed in consultation with the Commission.

6.12 Instructions to avoid delay in processing of cases while on Central Deputation

6.12.1 To avoid delay in the processing of cases pertaining to the period of their central deputation the following procedure⁶¹ has been prescribed by Department of Personnel & Training for adherence by Departments where the Officers are posted, while forwarding such cases to the cadre controlling authority:

⁶¹ O.M. No.11018/3/98—AIS(III) the 9th June 1995 of Ministry of Personnel, PG.& D/o Pension (D/o Personnel & Trg.

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- I. Any proposal to place an officer under suspension should be sent to the Cadre controlling Department only with the approval of the Minister in charge of the Department/Ministry administratively concerned.
- II. Any proposal to initiate disciplinary proceedings should be forwarded only after a decision has been taken at the level of the Minister in charge of the Department/Ministry after obtaining the preliminary explanation of the officer and after considering the same. In cases having a vigilance angle, administrative Ministries/Departments are also required to consult the Central Vigilance Commission and obtain its first stage advice before submitting the papers to the Minister.
- III. If an officer is transferred to another Ministry/Department, the Ministry concerned where the alleged misconduct was committed by the officer will have to take a view on the case in the light of the facts of the case and the explanation of the concerned officer at the level of the Minister before forwarding the case records for further necessary action. They must also give an intimation in this regard to the Ministry where the officer may be working for the time being.
- IV. Where it is proposed to initiate disciplinary proceedings, the proposal shall always be accompanied by a draft charge sheet along with imputations of misconduct and two sets of certified lists of documents.
- V. In cases where it is decided not to formally proceed against an officer but only to convey a caution/warning/displeasure of the Government, this will be communicated to the officer by the Ministry/Department concerned, through the administrative Ministry where he may be working at that time and two copies of the same shall be endorsed to the respective cadre controlling Department for record.
- VI. In a case, where there is no full-fledged investigation by the CBI and where formal action for major penalty is instituted by the concerned cadre controlling Ministry after due consideration of a proposal received from the administrative Ministry or otherwise, the administrative Ministry shall also nominate an officer who is well versed with the facts of the case for being appointed as the Presenting Officer.
- VII. All communications meant for the officers proceeded against would be served through the Ministry/Department where the officer is working for the time being.

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CHAPTER-7

SEXUAL HARASSMENT CASES

In this Chapter we cover –

- (i) Hon'ble Supreme Court guidelines in Vishaka Case.
- (ii) Salient features of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 – known as POSH Act
- (iii) Complaints handling machinery under the POSH Act
- (iv) Procedure to deal with a complaint from a female employee alleging Sexual Harassment
- (v) Harmonising the procedure in the Service Rules with those in POSH Act

Note: This Chapter primarily deals with the departmental proceedings' aspect of the Sexual Harassment cases. Full discussion of the POSH Act, in its entirety including the multi-dimensional responsibilities of the employer, training, awareness programme, etc. is beyond the scope of this Chapter.

7.1 Introduction

7.1.1 Constitution of India provides fundamental right against gender discrimination. However, sexual harassment at workplace is a phenomenon prevailing for long. Yet there were no specific provisions for handling this menace till the Hon'ble Supreme Court provided detailed guidelines and binding directions for handling Sexual Harassment of Women at workplace vide its judgment dated 13.08.1997 in *Vishaka and Ors Vs. State of Rajasthan*⁶².

7.1.2 Certain social activists and NGOs moved the Hon'ble Supreme Court through a Public Interest Litigation for the enforcement of the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India. As observed by the Apex Court, the petition titled *Vishaka and Ors Vs. The State of Rajasthan and Ors* was brought inter alia with the aim of focussing attention towards the societal aberration and assisting in finding suitable methods for realisation of the true concept of 'gender equality'; and to prevent sexual harassment of working women in all workplaces through judicial process, to fill the vacuum in existing legislation.

7.1.3 The immediate cause for the filing of the above writ petition was an incident of alleged brutal gang rape of social worker in a village of Rajasthan. The incident revealed the hazards to which a working woman may be exposed and the depravity to which sexual harassment can degenerate, and the urgency for safeguards by an

⁶² [(1997) 6 SCC 241, AIR 1997 SC. 3011].

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alternative mechanism in the absence of legislative measures. Hon'ble Supreme Court observed that *"In the absence of legislative measures, the need is to find an effective alternative mechanism to fulfil this felt and urgent social need."* and proceeded to lay down the guidelines and directions for tackling this menace.

7.1.4 The Apex court in its judgment observed "Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The common minimum requirement of this right has received global acceptance."⁶³

7.1.5 From the following it may be seen that through this judgment, Hon'ble Supreme Court has made prevention of sexual harassment at work place an institutional responsibility from the level of individual responsibility. Following duty has been cast on the employer:

"It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required."

7.1.6 The judgment defined Sexual harassment and directed that *"All employers or persons in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment."*

7.1.7 Vishaka judgment laid the foundations for the protection of women from sexual harassment at workplace by the following measures:

- (a) Non exhaustive definition of Sexual Harassment
- (b) Duties specified for Employer and other responsible persons
- (c) Preventive measures laid down
- (d) Notification, publication and circulation
- (e) Modification of Rules and Standing Orders
- (f) Creation of non-hostile environment
- (g) Criminal and Departmental action proposed
- (h) Complaint mechanism evolved
- (i) Composition of Complaints Committee laid down
- (j) Worker's initiative recommended
- (k) Awareness creation urged
- (l) Intervention/Assistance mandated against harassment by third party

7.1.8 Further the Central and the State Governments were to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector."

⁶³Judgment dated 13.08.1997 in Vishaka and Ors Vs. State of Rajasthan [(1997) 6 SCC 241, AIR 1997 SC. 3011]

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS**7.2 From Vishaka to POSH Act****7.2.1 Impact of Vishaka Judgment:**

Union of India made the All India Services (Prevention of Sexual Harassment) Regulations, 1998 (hereinafter “the 1998 Regulations”) and notified it vide DOPT Notification No.11017/30/97-AIS(III) dated 24.07.1998 (GSR No.143 dt. 08.08.1998). It may be seen from the above Regulations available in Part II of this Compendium that the following duties have been cast on the members of the service in the matter of sexual harassment of women at workplace:

- (i) Every member of the Service shall take all possible steps to ensure that all Government Servants for the time being under his control and authority keep away from any act of sexual harassment of working women.
- (ii) Every member of the Service who is in charge of a workplace shall take appropriate steps to prevent sexual harassment to any woman at such working place.
- (iii) No member of the Service shall indulge in any act of sexual harassment of any woman at working place.

Clause 2 of the 1998 Regulations defines Sexual harassment in identical terms as the Vishaka Judgment.

7.2.2 Another development attributable to the Vishaka judgment was the insertion of a proviso to Rule 8 (2) of the All India Services (Discipline and Appeal) Rules, 1969. Through this amendment, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, has been deemed to be the inquiring authority appointed by the disciplinary authority.

7.3 POSH Act**7.3.1 Evolution:**

The Bill on this subject was passed by the Lok Sabha on 03.09.2012 and by the Rajya Sabha on 26.02.2013. After the assent of the President on 22.04.2013, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 – (hereinafter “the Act” in this Chapter) became effective from 09.12.2013. On the same date i.e., 09.12.2013, the Central Government notified Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013. (Hereinafter referred to as “SH Rules” in this Chapter) under Section 29 of the Act for carrying out the provisions of this Act.

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As the purpose of the Act is Prevention of Sexual Harassment, it is often referred to as POSH Act.

7.3.2 Section 1(2) 23 & 24

As per Section 1 (2), the Act extends to the whole of India. Section 23 of the Act casts on the appropriate Governments. i.e., the Central and State Governments. The duty to monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace. Further Section 24 of the Act mandates that Appropriate Governments. will take measures to publicise the Act and to impart training to the functionaries under the Act.

7.3.3 Salient features of the Act:

- (a) Provides protection not only to the employees of the organisations, even visitors
- (b) Protection is not only from fellow employees – even from third party harassment
- (c) Extended definition of Workplace
- (d) Covers unorganised sector also
- (e) Redressal mechanism instilling confidence
- (f) Interim Relief during Investigation
- (g) Timeline at various stages
- (h) Confidentiality – overriding RTI Act
- (i) Institutional accountability
- (j) Provisions for penalty

7.4 Some Basic questions**7.4.1 Whom does the Act protect?****7.4.1.1 Section 2 (a)**

The Act defines aggrieved woman as under:

(a) “aggrieved woman” means—

- (i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent.
- (ii) in relation to dwelling place or house, a woman of any age who is employed in such a dwelling place or house.

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The phrase, 'whether employed or not' implies that even one who is not employed in the workplace, say a visitor, is also entitled for protection under the Act. It is significant that as far as dwelling places and houses are concerned; the protection is available only to the employees.

7.4.1.2 Section 2 (e) and (f)

Similar distinction needs to be noted in the matter of definitions of 'domestic worker' and 'employee' extracted here under:

(e) "domestic worker" means a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full-time basis, but does not include any member of the family of the employer.

(f) "employee" means a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name.

It needs to be noted that while the domestic worker is one who is employed for remuneration, the employee is a person employed 'whether for remuneration or not'. It is also relevant that otherwise also the definition is comprehensive to include contract worker, probationer, trainee, apprentice, etc.

7.4.2 Protection from whom? - Section 2 (m)

Section 2 (m) defines "respondent" means a person against whom the aggrieved woman has made a complaint under section 9.

It is noteworthy that the respondent may be an employee or otherwise. Secondly, the Act is silent about the gender of the respondent. Significantly, the Hon'ble High Court of Calcutta in its judgment Dated-27.11.2020, *Malabika Bhattacharjee vs. International Complaints Committee, Vivekananda College & Ors.*⁶⁴ has held that complaint of sexual harassment by the same gender also maintainable under the Act.

7.4.3 Protection from What?**7.4.3.1 Section 2 (n)**

⁶⁴ WPA. No.9141 of 2020

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Sexual harassment as defined by the Hon'ble Supreme Court in the Vishaka judgment and incorporated in the 1998 Regulations has been retained verbatim in the Act.

Section-2 (n) "sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely: —

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

7.4.3.2 Section 3 (2)

Section 3 (2) of the Act extends the scope of Sexual harassment by providing that "The following circumstances, among other circumstances, if it occurs, or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment: —

- i. Implied or explicit promise of preferential treatment in her employment; or
- ii. Implied or explicit threat of detrimental treatment in her employment; or
- iii. Implied or explicit threat about her present or future employment status; or
- iv. Interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- v. Humiliating treatment likely to affect her health or safety."

7.4.4 Where does the protection apply?**7.4.4.1 Section 2(o)**

Section 2 (o) of the Act provides as under:

(o) "workplace" includes—

- 1) Any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a government company or a corporation or a co-operative society.
- 2) Any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertain mental, industrial, health services or financial activities including production, supply, sale, distribution or service.
- 3) hospitals or nursing homes; any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto.

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- 4) Any place visited by the employee arising out of or during employment including transportation by the employer for undertaking such journey.
- 5) A dwelling place or a house.

7.4.4.2 Most important aspect of the definition of Workplace is that it is inclusive and not exhaustive. Another factor is that the protection extends to the places visited by the employees in the course of employment. Thus, the employer has a responsibility to ensure protection of the employee equally during their out-door duties as also the transportation by the employer for such journey.

7.5 Complaints handling committees

7.5.1 Section 2 (h) and (i)

The Act provides for two types of complaint committees viz.

- (i) Internal Committee constituted under Section 4 and
- (ii) Local Committee constituted under Section 6

7.5.2 Section 4

It needs to be noted that initially the above two committees were known as Internal Complaints Committee and Local Complaints Committee respectively. The nomenclatures were changed vide Repealing and Amending Act, 2016. Broadly, Internal Committee is constituted by the employer. It goes without saying that the Internal Committee shall have jurisdiction over the acts of sexual harassment committed in the workplace of the employer who has constituted the committee.

7.5.3 Section 6

On the other hand, Local Committee is constituted by the District Officer designated by the Appropriate Government - may be District Magistrate or Additional District Magistrate or the Collector or Deputy Collector. The role of the Local Committee is: "to receive complaints of sexual harassment from establishments where the [Internal Committee] has not been constituted due to having less than ten workers or if the complaint is against the employer himself"

In this Chapter we will be dealing with the Internal Committee only.

7.5.4 Composition, tenure and terms and conditions of the Committee

7.5.4.1 Section 4 (1)

First thing to be noted about the Internal Committee is that it is a standing committee – regardless of whether, there is any complaint of sexual harassment; whether or not,

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there is any women employed in the workplace. It may be seen from the Act that handling complaints of sexual harassment is not the sole responsibility of the Committee. As may be seen from the title of the Act, it has a threefold objective viz. prevention, prohibition and Redressal. The Internal Committee, being an important functionary under the Act is expected to make its contribution on all the three directions and that is why it is rightly re-named as Internal Committee from the erstwhile name of Internal Complaints Committee.

7.5.4.2 Section 4

Section 4(2) of the Act lays down the composition of the Internal Committee. Broadly the Internal Committee shall comprise a Presiding officer, internal members from among the employees and an external member. The committee shall conform to the following specifications subject to the condition that at least one-half of the total Members so nominated shall be women:

- I. The Presiding Officer shall be a woman employed at a senior level at workplace from amongst the employees: Provisos to section 4(2) (a) provides for the situation where sufficiently senior level woman employee is not available in the workplace for which the Internal Committee is constituted by nominating from other offices or administrative units of the same workplaces, failing which from any other workplace of the same employer or other department or organisation.
- II. Not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge.
- III. One member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment.

7.5.4.3 Rule 4 SH Rules

Rule 4 of Sexual Harassment Rules elaborates the phrase '*person familiar with the issues relating to sexual harassment*' occurring in Section 4 (2) (c) as a person who has expertise on issues relating to sexual harassment and may include any of the following: -

- (a) a social worker with at least five years' experience in the field of social work which leads to creation of societal conditions favourable towards empowerment of women and in particular in addressing workplace sexual harassment.
- (b) a person who is familiar with labour, service, civil or criminal law. Although Rule 4 deals with Section 7(1) (c) of the Act, the same phrase occurring in Section 4(2) (c), may be given the same meaning.

7.5.4.4 The question whether the Presiding officer of the Internal Committee must be senior to the officer against whom the complaint has been received, came up for

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consideration before the Hon'ble High Court of Allahabad in Writ No. — 31659 of 2015 [*Smt. Shobha Goswami vs State of U.P. And 2 Ors*] wherein the Hon'ble High Court held as under:

“In my opinion, there is nothing in the Scheme of the section which requires the lady member to be senior in rank to the officer against whom the allegation of sexual harassment is brought. The language of Section 4 of the Act only requires the lady member to be of Senior Level. What is to be noted is that the Committee consists of four members out of which three are women and one is from an NGO and is an independent member altogether.”⁶⁵

Government of India, DoPT OM No. F. No. 11013/2/2014-Estt.A-III dated 09.09.2016 inter alia conveys the ratio of the above decision.

7.5.5 Tenure of Appointment:

As per Section 4 (3), The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer. Language of the provision makes it amply clear that the Committee does not come and go *en masse*. Each member is independently entitled to a tenure of three years irrespective of others in the committee. Another point for consideration is that the employer is at liberty to fix the tenure subject to the ceiling of three years.

7.5.6 Remuneration for the members:

Section 4 (4) and Rule 3 of SH Rules

Section 4(4) of the Act provides for payment of fees or allowances by the employer to the Member appointed from amongst the non-governmental organisations for holding the proceedings of the Internal Committee. Rule 3 of the Sexual Harassment Rules provides for an allowance of two hundred rupees per day for holding the proceedings of the Internal Committee and the reimbursement of travel cost incurred in travelling by train in three tier air condition or air-conditioned bus and auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less.

7.5.7 Removal of members: Section 4(5)

As seen above, the tenure of appointment of the Presiding Officer and Members of the Internal Committee is as decided by the employer subject to a maximum of three years. However, one may be prematurely removed for the following reasons:

- a) Contravenes the confidentiality provisions of section 16; or

⁶⁵ Allahabad High Court Judgment dated 27.05.2015 in Writ A No. — 31659 of 2015 [*Smt. Shobha Goswami vs State of U.P. And 2 Ors.*]

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- b) Has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
- c) He has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
- d) Has so abused his position as to render his continuance in office prejudicial to the public interest.

7.6 Filing complaint

7.6.1 There are two modes of filing complaint viz. (i) Directly to the Internal Committee or (ii) filing an online complaint through the Sexual Harassment Electronic Box i.e., SHe-Box of the Ministry of Women and Child Development. Salient features of the SHe-Box mechanism are given in the Annexure to this Chapter.

7.6.2 Section 9

Under normal circumstances complaint is to be filed by the aggrieved woman. Section 9(2) deals with a contingency when she is unable to make a complaint on account of her physical or mental incapacity or death or otherwise. While Section 9(2) empowers the legal heir to make complaint, Rule 6 of the Sexual Harassment Rules provides for filing of the complaint by the following:

(i) where the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed by –

- (a) Her relative or friend; or
- (b) Her co-worker; or
- (c) An officer of the National Commission for Women or State Women's Commission; or
- (d) Any person who has knowledge of the incident, with the written consent of the aggrieved woman.

(ii) where the aggrieved woman is unable to make a complaint on account of her mental incapacity, a complaint may be filed by-

- (a) Her relative or friend; or
- (b) A special educator; or
- (c) A qualified psychiatrist or psychologist; or
- (d) The guardian or authority under whose care she is receiving treatment or care; or
- (e) Any person who has knowledge of the incident jointly with her relative or friend or a special educator or qualified psychiatrist or psychologist, or guardian or authority under whose care she is receiving treatment or care.

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(iii) where the aggrieved woman for any other reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent.

(iv) where the aggrieved woman is dead, a complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir.

7.6.3 Section 9 (1)

The complaint must be in writing. Proviso to Section 9(1) mandates the Presiding Officer or any Member of the Internal Committee to provide all reasonable assistance where such complaint cannot be made in writing

7.6.4 Section 9 (1)

Section 9(1) further prescribes a time limit of 'three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident' for filing the complaint. Second proviso to section 9(1) empowers the Internal Committee, for the reasons to be recorded in writing, to extend the time limit, not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

7.6.5 Rule 7 (1) of SH Rules

Rule 7(1) of the Sexual Harassment Rules provides that the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses.

7.7. Action on the complaint**7.7.1 Section 11, 13 and 14**

First and foremost, aspect of the role of the Internal Committee in handling the Complaint is that the Act provides for taking action under the provisions of the service Rules if they exist under the following circumstances:

- a) Conducting Fact Finding Inquiry under Section 11 of the Act.
- b) Punitive action against the respondent under Section 13 (3) when the Internal Committee arrives at the conclusion that the allegation against the respondent has been proved,
- c) Punitive action under Section 14 (1) against complainant for false complaint or producing any forged or misleading document,
- d) Punitive action against witnesses under Section 14(2) for false evidence or producing any forged or misleading document,
- e) Appeals provided under Section 18 are to be preferred in accordance with the provisions of the service rules where available.

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The above provisions will be discussed in detail under the relevant parts of this Chapter hereunder.

7.7.2 Internal Committee's role in handling the complaint broadly falls under the following heads:

- (a) transmission to the respondent
- (b) conciliation
- (c) fact finding Inquiry
- (d) interim relief
- (e) recommendation/report
- (f) action under Section 13 – if the Service Rules, so provide

7.7.3 Conciliation process - Section 10 and proviso to 11(1)

Section 10 of the Act provides that before initiating an inquiry under section 11 and at the request of the aggrieved woman, the Internal Committee may take steps to settle the matter between her and the respondent through conciliation subject to the condition that that no monetary settlement shall be made as a basis of conciliation. The settlement so arrived at shall be recorded and sent to the employer for further action, with copy to the complainant and the respondent. In such cases, there shall be no further inquiry unless the aggrieved woman complains under the proviso to Section 11(1) that any term or condition of the settlement has not been complied with by the respondent.

7.7.4 Procedure for inquiring into the complaint

7.7.4.1 Section 11

Where conciliation has not taken place or the aggrieved woman complains that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee shall act under Section 11 of the Act.

7.7.4.2 Section 11(1) provides that the Internal Committee shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent. It was a matter of intensive debate for a long time as to whether there is any service rule for conducting the Inquiry contemplated under Section 11 of the Act. Alternatively, whether the inquiry contemplated under Section 11 is the same as the one prescribed in the service rules leading to the imposition of penalty e.g., Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969, Rule 14 of the CCS (CCA) Rules 1965, etc. This aspect has been dealt with in a subsequent section of this Chapter under "Dual Role of the Internal Committee". For the present, it may be noted that the inquiry into the complaint referred to in the provision is a fact-finding inquiry. In the absence of service rules,

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inquiry into the complaint shall have to be made as per the procedure prescribed under Rule 7 of the Sexual Harassment Rules. Broadly, the procedure is as under:

- (a) One of the six copies of the complaint and supporting documents received from the aggrieved woman shall be sent to the respondent within seven working days.
- (b) The respondent shall file his reply along with his list of documents, and names and addresses of witnesses, within ten working days from the date of receipt of the complaint.
- (c) Inquiry shall be held in accordance with the principles of natural justice.
- (d) The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.
- (e) Quorum for conducting the inquiry, is minimum of three Members including the Presiding Officer

Besides, the Second proviso to Section 11(1) provides that where both the parties are employees, the parties shall, during inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

7.7.4.3 Timeline:

Section 11(4) prescribes that the inquiry into the complaint shall be completed within a period of ninety days. However, Govt. of India DoP&T OM No.11013/7/2016-Estt.A-III Dated the 22nd December, 2016 prescribes that as far as practicable, the inquiry should be completed within 1 month and in no case should it take more than 90 days.

7.7.4.4. Powers of Internal Committee:

Section 11 (3) vests the Internal Committee with the powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely: —

- i. Summoning and enforcing the attendance of any person and examining him on oath.
- ii. Requiring the discovery and production of documents; and
- iii. Any other matter which may be prescribed.

7.7.4.5 Power to hold Ex parte Inquiry:

Rule 7 (5) of the Sexual Harassment Rules empowers the Internal Committee to terminate the inquiry proceedings or to give an *ex parte* decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or

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himself for three consecutive hearings. However, the Committee has been mandated to give a notice in writing, fifteen days in advance, to the party concerned before such termination or *ex parte* decision,

7.8 Relief during Inquiry**7.8.1 Section 12 (1) & 12 (2) and Rule 8 of SH Rules**

Internal Committee has been empowered to recommend to the employer certain relief during pendency of the inquiry on a written request made by the aggrieved woman.

Section 12 (1) provides the following reliefs:

1. Transfer the aggrieved woman or the respondent to any other workplace; or
2. Grant leave to the aggrieved woman up to a period of three months.

Rule 8 of the SH Rules provide the following:

1. Restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report and assign the same to another officer.
2. Restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman.

Section 12 (2) further provides that the above-mentioned leave shall be in addition to the leave she would be otherwise entitled.

7.8.2 Section 12 (3)

While the grant of the reliefs on the request of the aggrieved woman is at the discretion of the Internal Committee, language of Section 12 (3) indicates that the recommendation of the internal Committee is binding on the employer as may be seen from the phrase “shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.”

7.9 Inquiry Report and action**7.9.1 Possible outcomes:**

Section 13 (1) of the Act requires the Internal Committee to provide a report of its findings to the employer, within ten days from the date of completion of the inquiry with copies to the parties concerned. There are three possible outcomes for the Inquiry into the complaints as contemplated under Section 11 of the Act viz.

- (a) Allegation against the respondent not proved

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- (b) Allegation against the respondent proved
- (c) Allegation against the respondent is malicious or complaint has been made knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document

Recommendations in the report against each of the above-mentioned outcomes and further action thereon corresponding to the three scenarios are discussed in the succeeding paragraphs.

7.9.2 Section 13 (2)

Where the Internal Committee arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer that no action is required to be taken in the matter.

7.9.2.1 Section 13(3)

Where the Internal Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall make two-fold recommendations viz. (i) regarding action against the respondent for sexual harassment as a misconduct and (ii) payment of compensation to the aggrieved woman or her legal heirs. Punitive action against the respondent for the misconduct of sexual harassment is to be taken as per the service rules of the respondent where exist, otherwise as prescribed under the Sexual Harassment Rules. In the case of members of the All India Services, action for the misconduct is required to be taken under All India Services (Discipline and Appeal) Rules, 1969. Detailed procedure under these Rules is covered in the relevant chapters of this compendium.

7.9.2.2 Rule 9 of SH Rules.

For the sake of completion, Rule 9 of the Sexual Harassment Rules laying down the procedure for acting against respondent not covered by any service Rules, is extracted hereunder:

“9. Manner of taking action for sexual harassment. - Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be, to take any action including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counselling session or carrying out community service.”

7.9.2.3 Section 13 (3) (ii) Payment of compensation:

Where the Internal Committee arrives at the conclusion that the allegation against the respondent has been proved, apart from recommending action against the respondent for the misconduct of sexual harassment, it shall also recommend under Section 13 (3)(ii) “ to deduct, notwithstanding anything in the service rules applicable to the

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respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15.”

7.9.2.4 Provisos to Section 13 (3) (ii)

As per the provisos to section 13 (3) (ii) in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct the respondent to pay such sum to the aggrieved woman; On failure to make payment, orders may be passed for recovery of the amount as arrears of land revenue

7.9.2.5 Section 15

Quantum of compensation payable to the aggrieved woman or her legal heir is determined having regard to the following factors listed in Section 15 of the Act:

- a) The mental trauma, pain, suffering and emotional distress caused to the aggrieved woman.
- b) The loss in the career opportunity due to the incident of sexual harassment.
- c) Medical expenses incurred by the victim for physical or psychiatric treatment.
- d) The income and financial status of the respondent.
- e) Feasibility of such payment in lump sum or in instalments.

7.9.3 Dealing with Malicious complaint and False Evidence**7.9.3.1 Section 14**

As seen above, one of the possible conclusions which the Internal Committee may arrive at is that the complaint is malicious, and the complainant knew it to be false. Further there may be instances of producing false evidence and forged documents. Section 14 (1) of the Act provides for punitive action if the Internal Committee arrives at the conclusion that.

- (i) Allegation against the respondent is malicious or
- (ii) The aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or
- (iii) The aggrieved woman or any other person making the complaint has produced any forged or misleading document,

Under the above scenario(s) the Internal Committee may recommend to the employer to take action against the woman or the person who has made the complaint, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed. It is further provided under the provisos that (i) mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section: and

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(ii) the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

As of now, no procedure has been prescribed in SH Rules for conducting the above inquiry for establishing the malicious intent on part of the complainant. It would therefore be appropriate to hold this inquiry in accordance with the principles of natural justice.

7.9.3.2. Section 14 (2)

Any witness who has given false evidence or produced any forged or misleading document in the inquiry will be dealt with in the same way as the aggrieved woman or any other person making complaint knowing it to be false.

7.10 Dual Role of the Internal Committee

7.10.1 Even before the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, several rules were in place for acting against the employees for misconduct e.g., the 1969 Rules, CCS (CCA) Rules 1965, etc. Based on the Judgment of the Hon'ble Supreme Court in Vishaka case, necessary provisions were made in the departmental rules for dealing with the bane of sexual harassment at workplace. For example, CCS (CCA) Rules 1965 was amended in 2004 to add the proviso to Rule 14 (2) to entrust the Inquiry in Sexual Harassment cases to the Complaints Committee as it was then known. As regards the 1969 Rules, the following proviso was added to Rule 8 (2):

Provided that where there is a complaint of sexual harassment within the meaning of rule 3 of the All India Services (Prevention of Sexual Harassment) Regulations, 1998, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been made for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable, in accordance with the procedure laid down in these rules.

As of now, Section 11 of the POSH Act provides that the Internal Committee shall proceed to make inquiry into the complaint. This inquiry will culminate into a report wherein the Committee inter alia "shall recommend to the employer to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent". From the above, it is clear that punitive action against the employee for the misconduct of sexual harassment is to be initiated based on the report of the Internal Committee under Section 13. The Inquiry into the complaint under Section 11 is to enable the Internal Committee to arrive at the conclusion as to whether the allegation against the respondent has been proved.

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In respect of most of the services and Organisations under the Govt. – including the cases of members of All India Services - the role of the Internal Committee does not end with making the above recommendation under Section 13 (3). This is so because the rules for the disciplinary proceedings for the misconduct – Proviso to Rule 8 (2) of the 1969 Rules, Proviso under Rule 14(2) of the CCS (CCA) Rules 1965, etc. provide that in the cases relating to sexual harassment, the Internal Committee shall be deemed to be the Inquiring Authority.

7.10.2 Above dual role of the Internal Committee in the cases of sexual harassment has been explained clearly in DoPT OM F. No. 11013/2/2014-Estt (A-II1) dated 16 Jul 2015. Although the above OM was issued in the context of CCS (CCA) Rules, 1965, the contents thereof are equally applicable to the All-India Services as well. Guide on "Steps for Conduct of Inquiry in complaints of Sexual Harassment" annexed to the above OM may be followed in all services and organization where Internal Committee has been entrusted with the role of Inquiring Authority.

Following note of caution in the guide is worth emphasis:

“10. As the Complaints Committees also act as Inquiring Authority in terms of Rule 14(2) mentioned above, care must be taken that at the investigation stage that impartiality is maintained. Any failure on this account may invite allegations of bias when conducting the inquiry and may result in the inquiry getting vitiated. As per the instructions, when allegations of bias are received against an Inquiring Authority, such Inquiring Authority is required to stay the inquiry till the Disciplinary Authority takes a decision on the allegations of bias. Further, if allegations of bias are established against one member of the Committee on this basis, that Committee may not be allowed to conduct the inquiry.”

7.10.3 It is also significant that the Apex court in its judgment dated 24 April 2020 in Civil Appeal No. 2365 of 2020 [*Nisha Priya Bhatia Vs. Union of India & Anr.*] clarifies the issue beyond the pale of doubt.⁶⁶

“95. The inquiry under the 2013 Act is a separate inquiry of a fact-finding nature. Post the conduct of a fact-finding inquiry under the 2013 Act, the matter goes before the department for a departmental inquiry under the relevant departmental rules [CCS (CCA) Rules in the present case] and accordingly, action follows. The said departmental inquiry is an in-house mechanism wherein the participants are restricted, and concerns of locus are strict and precise. The ambit of such inquiry is strictly confined between the delinquent employee and the concerned department.

⁶⁶ Judgment dated 24 April 2020 in Civil Appeal No. 2365 of 2020 [*Nisha Priya Bhatia Vs. Union of India & Anr.*] 2020 SCC online SC 394, 2020(13) SCC56, 2020(5) JT 515, 2020(6) SCALE 682.

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7.10.4 Referring to the DOPT OM's dated 16.07.2015 and dated 2.8.2016, the Hon'ble Apex Court observed as under:

"96. The notifications issued by the respondent in the form of O.Ms. are departmental instructions and are intended to supplement the 2013 Act and Rules framed thereunder. Such notifications do not operate in derogation of the 2013 Act, rather, they act in furtherance of the same. The O.M. dated 02.08.2016, for instance, reads thus: "3. In accordance with Section 18(1) of the POSH Act, 2013, it has been decided that in all cases of allegation of sexual harassment, the following procedure may be adopted. 97. A bare perusal of the afore quoted O.M. makes it amply clear that the said notification furthers the procedure predicated under the 2013 Act and do not, in any manner, reduce the vigour thereof."

7.11 Confidentiality

7.11.1 Section 16

Section 16 of the Act prohibits publication, communication or making known to the public, press and media the following:

- (i) The contents of the complaint made under section 9,
- (ii) The identity and addresses of the aggrieved woman, respondent and witnesses,
- (iii) Any information relating to conciliation and inquiry proceedings,
- (iv) Recommendations of the Internal Committee, and
- (v) The action taken by the employer under the provisions of this Act

This provision has over-riding effect on the Right to Information Act, 2005 (22 of 2005), by virtue of the non obstante opening phrase i.e., "Notwithstanding anything contained in the Right to Information Act, 2005 (22 of 2005)"

The proviso to the above section, however, provides that there is no restriction for dissemination of information regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

7.11.2 Section 17 and Rule 12 of the SH Rules

Contravention of the confidentiality clause by any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act will lead to penal consequences under Section 17. While the persons in respect of whom service rules are available will be proceeded against under such rules, a penalty of Rs. 5000 is leviable in respect of others under Rule 12 of the SH Rules

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7.12 Appeal**Section 18**

The Act provides for appeal by the aggrieved person against the following:

- I. Recommendations made
 - a. Under sub-section (2) of section 13 or
 - b. Under clause (i) or clause (ii) of sub-section (3) of section 13 or
 - c. Sub-section (1) or sub-section (2) of section 14 or
 - d. Section 17 or
- II. Non-implementation of such recommendations

It also relevant that DoPT Vide its OM F. No. 11012/5/2016-Estt.A-III dated 02 Aug 2016 has clarified as under:

Where a Complaint Committee has not recommended any action against the employee against whom the allegation have been made in a case involving allegations of sexual harassment, the Disciplinary Authority shall supply a copy of the Report of the Complaint Committee to the complainant and shall consider her representation, if any submitted, before concluding. The representation shall be deemed to be an appeal under section 18(i) of the Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

7.13 Timelines in the procedure

For filing complaint: Three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident – under Section 9(1) of the Act Note: extendable up to maximum of three months under Second provision.

Referring the complaint to the respondent: Seven working days under Rule 7 (2) of SH Rules.

Respondent's reply to the complaint: Ten working days – under Rule 7(3) of SH Rules

Internal Committee's notice regarding holding of *ex parte* proceedings: 15 days in advance – under the Proviso to Rule 7 (5) of the S H Rules.

Completion of the Inquiry under Section 11 of the Act: 90 days – under Section 11 (4)

Providing report of Internal Committee's findings to the employer: Ten days from the date of completion of the inquiry – under Section 13 (1)

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Employer acting on the report of the Internal Committee: within 60 days of receipt of the report – under Section 13 (4)

Filing of Appeal against the recommendations of the Internal Committee: within 90 days of the recommendations – under Section 18(2)

7.14 Conclusion

The Act is a major step in the direction of ensuring gender equality and providing a harassment free working atmosphere for women. It casts several responsibilities on the employer for promoting the objective of the Act.

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Annexure**Sexual Harassment Electronic Box (SHe-Box)****Salient Features**

- A single window access to every woman,
- Irrespective of her work status,
- Whether working in organised or unorganised, private or public sector,
- To facilitate the registration of complaint related to sexual harassment.
- Any woman facing sexual harassment at workplace can register their complaint through this portal.
- It will be directly sent to the concerned authority having jurisdiction to act upon the matter.

Contains the following for free download

- Act and Rules in English and Hindi
- A Handbook
- Training Module
- Advisories OM/guidelines issued by Department of Personnel & Training
- Videos for building awareness

How to Register complaint

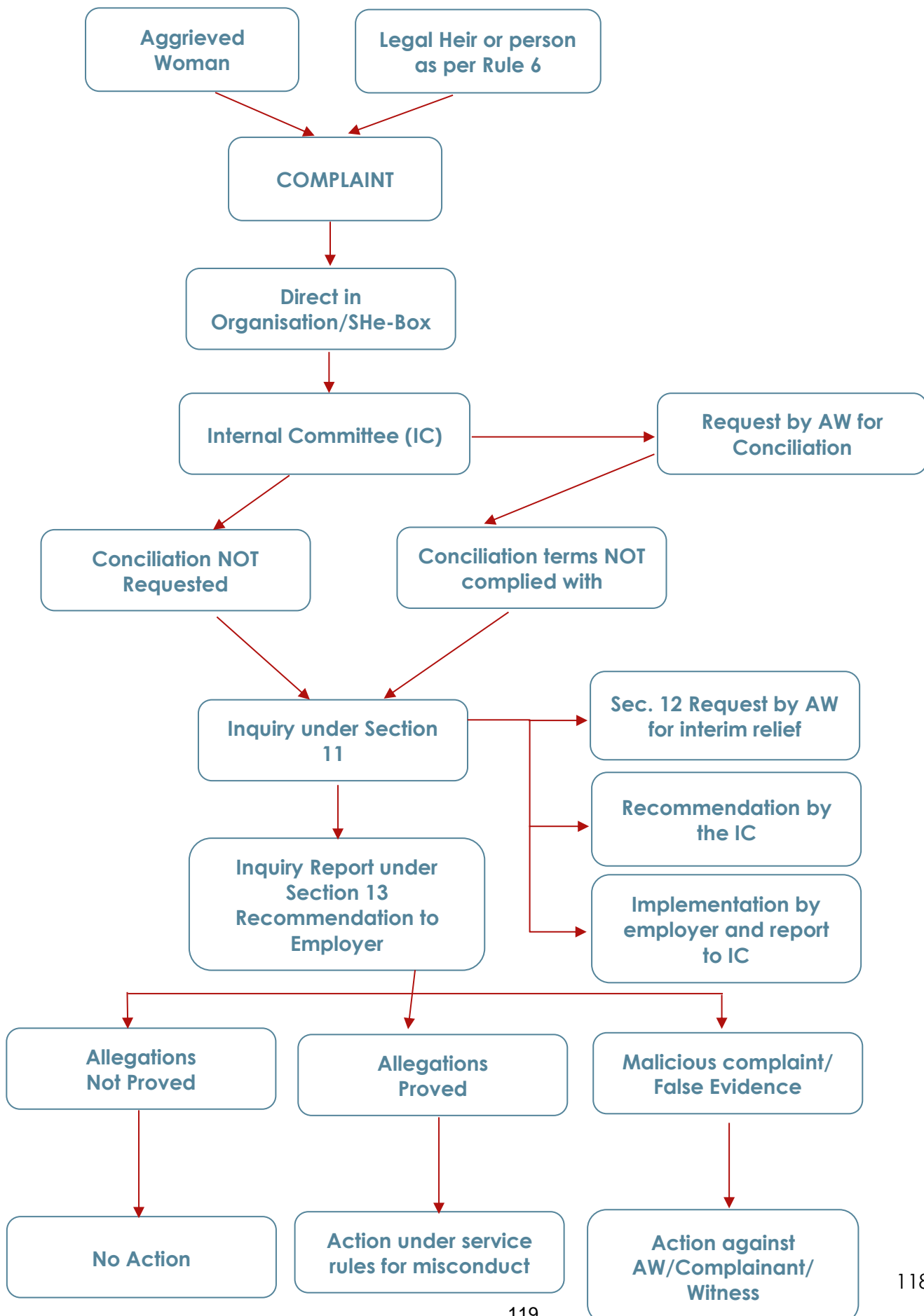
- Open the page
- <http://www.shebox.nic.in/>
- Follow instructions on the screen

After submission

- Complaints are sent to the concerned Internal Committee
- Complaints filed in SHe-Box will contain only brief description
- Internal Committee should contact the complainant
- Obtain complete details together with evidence
- Initiate action as per Section 11 of the Act.

[OM No. 11013/7/2016/Estt. A-iii dated 01 November 2017]

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FLOW DIAGRAM ON SEXUAL HARASSMENT CASES

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CHAPTER-8

ACTION ON INQUIRY OFFICER'S REPORT

In this Chapter the following aspects are covered:

- (i) Action to be taken on Inquiry Report.
- (ii) Performa check list for consultation with UPSC.
- (iii) Flow chart for Action on IO's Report

8.1. The report of the Inquiring Authority is intended to assist the disciplinary authority in concluding 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 based on his own assessment of the evidence on record.

8.2 **Further Inquiry:** On receipt of the report and the record of the inquiry, the Disciplinary Authority must 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 some 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, under Rule 9(1) of the 1969 Rules, for reasons to be recorded in writing, remit the case to the Inquiring Authority for further inquiry and report.

8.3 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* 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".⁶⁷

8.4 In *K. R. Deb Vs. Collector of Central Excise*, the SC observed that "*It seems to us that Rule 15 (CCS (CCA) Rules, 1965), on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous*

⁶⁷ Dwarka Chand Vs State of Rajasthan (AIR 1958 Raj 38)

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inquiries on the ground that the report- of, the Inquiring Officer or Officers does not appeal to the Disciplinary Authority”⁶⁸.

8.5 De-novo Inquiry:

In *Union of India & Ors. vs P. Thayagarajan* on 24 November 1998 SC observed that “When important evidence, either to be relied upon by the department or by the delinquent official, is shut out, this would not result in any advancement of any justice but on the other hand result in a miscarriage thereof. Therefore, we are of the view that Rule 27(c) [Central Reserve Police Force Rules, 1955] enables the Disciplinary Authority to record his findings on the report and to pass an appropriate order including ordering a *de novo* enquiry”⁶⁹

8.6 Thus as the law stands today, de- novo inquiry can be ordered by the Disciplinary Authority based on the circumstances of the case, but it should not be because the report of the Inquiry Authority does not appeal to the DA. Illustrative circumstances where the Disciplinary Authority may remit the case to the Inquiring Authority for further Inquiry are as under:

1. Where the Inquiring Authority has failed to ask the mandatory question under Rule 8(19) of the AIS (D&A) Rules or any other corresponding rule under which the inquiry was held,
2. Where the Inquiring Authority has disallowed the additional document or witness demanded by the Charged Officer and in the opinion of the Disciplinary Authority the disallowed document or witness is relevant for the purpose of defence.
3. Where the inquiry Authority has rejected the request for engaging a defence assistant from outstation and in the opinion of the Disciplinary Authority the request of the Charged Officer is justified,
4. Where the ex-parte proceedings were initiated due to absence of Charged Officer and later when the Charged Officer was prevented from participating in further proceedings on the plea that ex-parte inquiry had commenced.

8.7 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.

⁶⁸K. R. Deb Vs. Collector of Central Excise, Shillong 1971 (2) SCC 102

⁶⁹ Union of India and others vs. P. Thayagarajan (1999) 1 SCC 733

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8.8 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 along with its note of disagreement, if any, to the member of service, irrespective of whether the report is favourable or not to the member of service⁷⁰.

8.9 The communication forwarding the IO's report etc. should not contain phrases such as 'Article of charge is fully proved' or 'Article of charge is fully substantiated' which could be construed to mean that the disciplinary authority is biased even before considering the representation of the charged officer and this would be against the letter and spirit of the AIS (D&A) Rules, 1969⁷¹. The Disciplinary Authority may be sent 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."

8.10 The disciplinary authority shall consider the representation, if any, submitted by the Member and record its findings before proceeding further in the matter.⁷² 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 Central Vigilance Commission, if necessary.

8.11 If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the minor penalties (specified in clauses (i) to (iv) of Rule 6 of AIS (D&A) Rules, 1969), is to be imposed on the member of the Service, it shall make an order imposing such penalty in such manner as specified by the Government⁷³.

8.12 If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that major penalties (as specified in clauses (v) to (ix) of rule 6 of AIS (D&A) Rules, 1969) is to be imposed on the member of the Service, it shall make an order imposing such penalty in such manner as specified by the Government.

8.13 In both the above cases the disciplinary authority shall forward to the Union Public Service Commission for its advice-

⁷⁰ Refer Rule 9(2) of AIS(DA) Rules, 1969

⁷¹ DoPT letter No. 11018/05/2012 –AIS.III dated 23rd August 2012

⁷² Refer Rule 10(1)(c) of AIS(DA) Rules, 1969

⁷³ Refer Rule 9(3) of AIS(DA) Rules, 1969

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- I. A copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge; and
- II. comments of disciplinary authority on the representation of the member of Service on the Inquiry Report and disagreement note, if any all the case records of the inquiry proceedings⁷⁴. The checklist for consultation with UPSC forms part of this chapter

8.14 A copy of the advice of the Commission received shall be forwarded to the member of Service, who may submit his written representation or submission to the disciplinary authority within a period of fifteen days, on the advice of the Commission. It can be extended by fifteen days. However, the extension of time shall not exceed forty-five days from the receipt of advice of the Commission by the member of Service.⁷⁵

8.15 The advice of the Commission received under clause (a) and the representation of the member of Service on such advice shall be taken into consideration before making any order imposing any penalty on the member of Service⁷⁶,

8.16 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.

8.17 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) (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:⁷⁷

“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

⁷⁴ Refer Rule 9(5)(a) (ii) of AIS(DA) Rules, 1969

⁷⁵ Refer Rule 9(5)(b) of AIS(DA) Rules, 1969

⁷⁶ Refer Rule 9(5)(c) of AIS(DA) Rules, 1969

⁷⁷ *Bhagar Raja Vs. UOI AIR (1967) s(SC) 302*

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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.

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS**PROFORMA/CHECK LIST FOR FORWARDING DISCIPLINARY CASES TO
THE UNION PUBLIC SERVICE COMMISSION****[Referred in Rule 9(5)(a)]****[as prescribed by DoPT OM No.39011/08/2016-Estt(B) dated 28.12.2018]**

PART I: SERVICE AND RELATED PARTICULARS	
1.Name of charged officer and the service on which borne	
2. (I) Whether temporary/permanent/contract service (II) If confirmed, date of confirmation	
*3 Post held substantively, if in permanent service a) Designation b) Pay Level in the pay matrix (indicating pay index, etc.) c) Pay drawn d) Date from which pay shown against (c) drawn e) Date of increment (*For AIS Officers, need not be filled up]	
4. Post held at present a) Designation b) Pay Level in the pay matrix (indicating pay index, etc.) c) Pay drawn d) Date from which pay shown against (c) drawn e) Date of next increment	
5. The next lower post (along with pay level in the pay matrix), the officer would have held but on his appointment to the present post he is holding	
6. Date of Birth	
7. Date of joining Govt. Service	
8. Due date of retirement or actual date of retirement, if already retired	
9. (a) Amount of monthly pension admissible/sanctioned (b) (i) Amount of gratuity admissible (In respect of disciplinary proceedings initiated during service) (ii) Amount of gratuity withheld (for disciplinary proceedings after retirement)	

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10. (a) Appointing authority in respect of the post held at present, or the authority which actually appointed the person, if that authority is higher. (b) Authority competent to impose the penalty in respect of the post held at present (c) Appellate authority in respect of the post held at present	
11. Whether an oral inquiry, if required under the rules, has been held	
12. Name and designation of Inquiry officer appointed, if any.	
PART II: DETAILS OF CASE RECORDS (All the records are required to be arranged and cross-referenced, as indexed below and page numbers of the file/folders to be indicated against each item.)	
Item	Reference/Comments (Please indicate references in terms of page numbers, file numbers, folders, etc. Do not leave any column blank. If a document is not enclosed, indicate reasons.)
(A) ORIGINAL CASES (Where the Central Government or the State Government is the Disciplinary Authority, and an order of penalty is to be passed for the first time)	
(a) Complaint, if any, received by the Authorities	
(b) (i) Report of the preliminary enquiry, if any, held in the matter leading to the institution of formal disciplinary proceedings against the C.O. (together with Depositions recorded)	
(ii) Order, of suspension/ revocation of suspension, if any,	
(c) Order, if any of the competent authority for joint/common proceedings where two or more Govt. servants are involved.	
(d) i) Charge sheet together with the statement of imputations along with enclosures. ii) Records of delivery of charge sheet to the charged officer	

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iii) Whether the Charge sheet issued as per the Rules	
(e) Reply of the Charged Officer	
(f) A note from the Disciplinary Authority explaining the factual or procedural points, if any, raised in the Charged Officer's reply in minor penalty cases where no enquiry has been held	
(g) Order of the Disciplinary Authority appointing the Inquiry Officer	
(h) Order of the Disciplinary Authority appointing the Presenting Officer	
(i) Daily Order Sheets maintained by the Inquiry Officer, indicating the progress of oral inquiry	
(j) Correspondence of the Inquiry Officer, if any, with the Disciplinary Authority or the Charged Officer	
(k) i) Depositions — oral statements, recorded from prosecution witnesses and defence witnesses ii) Statement of defence of the Charged Officer iii) General examination of the charged officer iv) Whether copies of relevant documents have been supplied to the Charged Officer v) Exhibits (in original/legible copies duly authenticated) a) Prosecution b) Defence	
(l) i) Written brief, if any, submitted by the Presenting Officer ii) Whether a copy of brief of Presenting Officer supplied to the Charged Officer	
(m) Written brief, if any, submitted by the Charged Officer.	
(n) Inquiry Officer's report	
(o) i) Whether Inquiry Officer's report provided to the charged officer. ii) Whether disagreement of the Disciplinary Authority, if any, on the report of the Inquiry Officer, communicated to the Charged Officer	

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iii) Representation of the Charged Officer on the findings of the Inquiry Officer.	
iv) Para-wise comments of the Disciplinary Authority on the representation of the Charged Officer, if any.	
(p) Whether the Disciplinary Authority has considered the merits of the case and come to the conclusion that a formal penalty is called for	
(q) In cases of minor penalty, following information may also be provided: i) Whether the case is being submitted at least 90 days prior to the date of retirement. ii) If not, the reasons for late submission of the case may be indicated.	
(r) In cases of major penalty, following information may also be provided: i) Whether the case is being submitted at least 180 days prior to the date of retirement. ii) If not, the reasons for late submission of the case may be indicated.	
(B) CONVICTION CASES (Where any penalty is to be imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge)	
a) Complaint F.I.R.	
b) Investigation Report	
c) Judgement of the Court	
d) Show Cause Notice issued to the Government servant (The Show Cause Notice should tentatively propose imposition of the penalty of highest grade, i.e., dismissal from service which shall ordinarily be a disqualification for future employment under the Government / withholding of hundred percent of pension and gratuity in full on permanent basis, as the case may be)	
e) Record of the delivery of the Show Cause Notice	
f) Representation of the Government servant on the Show Cause Notice	
g) Comments of DA on the representation of Government servant	

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h) Whether the disciplinary authority has considered the merits of the case and come to the conclusion that a formal penalty is called for on the ground of conduct which has led to the conviction of the Government servant on a criminal charge	
(C) APPEAL CASES (Where the order of penalty has been passed by a subordinate authority and an appeal lies to the President) (In these cases, all the documents listed in (A) should also be sent)	
a) Order passed by the Disciplinary Authority together with a note, if any, containing the conclusion arrived at by him in respect of each charge	
b) Appeal of the officer concerned	
c) Whether appeal has been addressed to the competent authority	
d) Comments of the Disciplinary Authority on the Appeal including clarification on procedural points, if any, raised by the Appellant	
(D) REVISION/REVIEW CASES	
i) Whether Appeal addressed to the President of India or to some Subordinate authority. (Where the Appellate Authority is subordinate to the President and a modification of the appellate order is sought by way of Revision/Review or where the President has passed the original order) (In these cases, all the documents listed in (A) and (C) should also be sent)	
ii) Whether the approval of the Competent Authority obtained before referring the Case for Commission's advice.	
a) Appellate Authority's order/ President's order	
b) Petition/Memorial submitted by the officer	
c) Note indicating the Reviewing Authority's findings on the charges, detailing the reasons warranting modification of the penalty already imposed and the extent of such modification	
d) Additional comments on the procedural or factual points, if any, raised in petition.	
(E) PENSION CASES	

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(Where the President proposes to withhold or withdraw pension otherwise admissible to the officer as a result of disciplinary proceedings instituted/ deemed to continue in respect of an officer who has retired from service)

(In these cases, all the documents listed in (A) should also be sent)

a) Order of the President/Central Government*, if any, that the disciplinary proceedings should be instituted under the relevant pension rules.	
b) Show cause notice issued to the officer indicating precisely the quantum of cut proposed to be made in his pension and the period for which it shall be operative	
C) Reply of the officer to the aforesaid Notice	
d) Comments on factual or procedural points raised by the officer in his reply.	
e) Approval of the President to the effect that the pensioner is found guilty of grave misconduct or negligence warranting withholding/ withdrawing of pension and/or gratuity or recovery from a pension or gratuity	
(F) GENERAL	
a) Miscellaneous documents regarding evidence such as the exhibits, statements, etc. referred to in (A) to (E) and extracts of relevant Rules, Codes, Manuals, Acts, Judgements etc.	
b) Information/position of disciplinary proceedings instituted against other co-accused officers.	
c) Information/ position of action instituted against persons! officials (Other than Government servants) involved in the case, if any	
d) Whether complete and up to date Confidential Roll of the officer has been enclosed.	
e) Details of other disciplinary case(s) instituted against the Government servant and the penalty imposed, if any.	
f) Present status of pending court	

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cases, if any, along with the next date of hearing.	

*Signature

Name (in Block letters) of the Officer
signing this statement.....

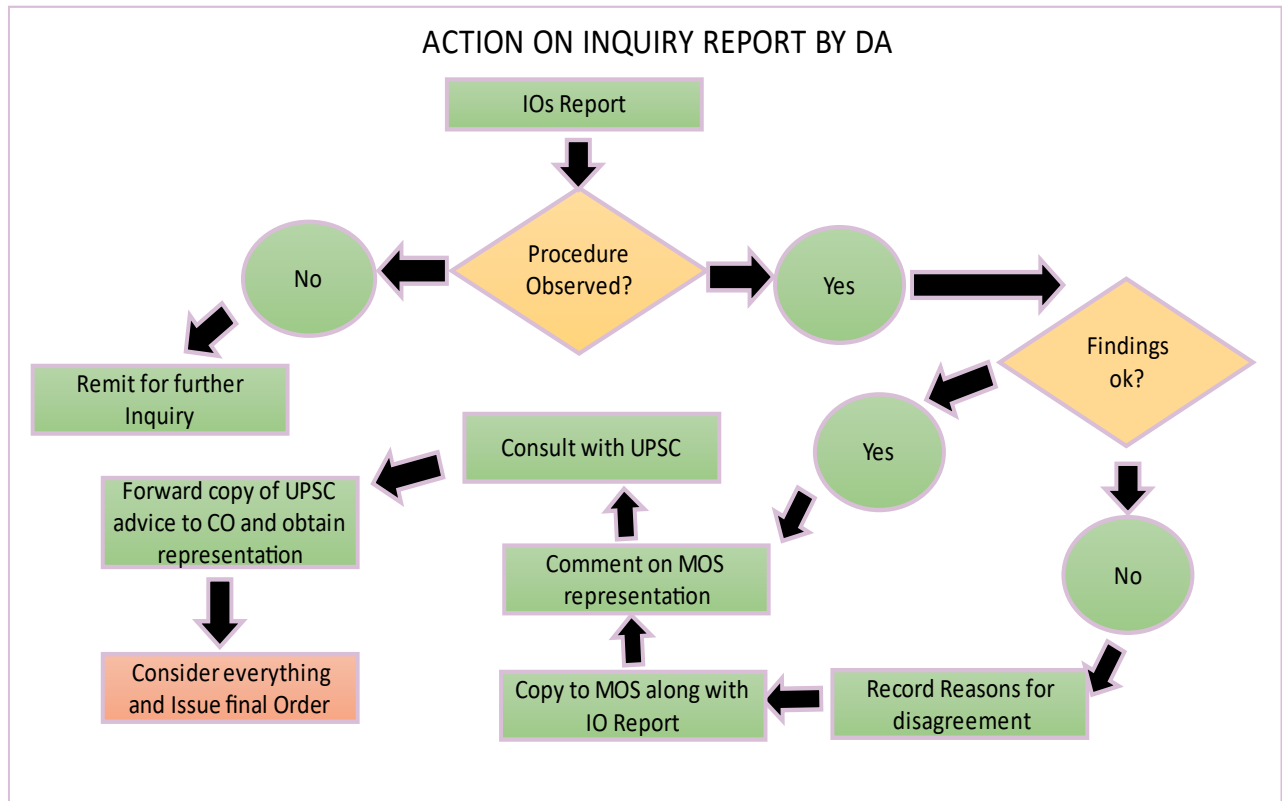
Designation.....

Telephone No

Date.....

*To be signed by an officer not below the rank of CVO/Joint Secretary to the Government of India

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CHAPTER-9

COMMON DEFICIENCIES IN DISCIPLINARY CASES

9.1 Common grounds on which cases when received under Single Window System are returned by DoPT/ UPSC**9.1.1 Procedural:**

- a) General Examination of the Charged Officer (CO) under Rule 8(19) of AIS (D&A) Rules, 1969 has not been conducted.
- b) The proposal has not been approved by Hon'ble Chief Minister and instead it has been written on the note that, '*CM has approved*'. It has not been clarified whether there is any laid down guidelines for such approval by subordinate authority on behalf of Chief Minister.
- c) Even when the CO has been convicted by the Court, disciplinary proceedings have not been initiated against him under Rule 14 of the AIS (D&A) Rules, 1969.
- d) PO brief has not been sent to the CO.
- e) Documents as requested by CO have not been provided to the CO without assigning any reason.
- f) It has not been informed that whether the DA has considered the matter.
- g) It has not been informed that whether objections raised by the defence assistant were addressed or not.
- h) It has not been informed that whether the change of the witness from the charge sheet issued to the CO has been approved by the Competent Authority and the same was intimated to the CO.
- i) Draft articles of the charges are incomplete and already signed in cases of seeking sanction of Government of India so as to initiate disciplinary proceedings against CO under Rule 6 of AIS (DCRB) Rules, 1958.
- j) It appears from the note sheet of the state government that the representation of the CO was not taken after conducting General Examination of the CO.
- k) In all the cases in which a cut in pension is tentatively proposed by the Disciplinary Authority (DA), the DA must indicate in his note that the charges proved are grave enough and therefore a cut in pension/ pensioner benefits is

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proposed. SDA has not incorporated in his note about the rule empowering against MoS viz. Rule 6 of the AIS (DCRB) Rules, 1958.

- l) The proposal has been submitted after the time limit of 4 years have expired in accordance with Rule 6(1)(b)(i) of the AIS (DCRB) Rules, 1958.
- m) Even though the State Government vide its letter dated XXXX had directed Deputy Resident Commissioner to submit the documents/ case under Single Window System, the proposal was delivered in Central Registry of this Department.

9.1.2 Complete Information:

- a) Para-wise comments of the State Disciplinary Authority, on the representation of the CO are not available.
- b) State government has filled both the columns of normal disciplinary proceedings case as well as conviction case and therefore it has not been made clear as under which Category, State Government is proposing to process the case.
- c) The reason of delay in submitting the proposal has not been justified. Mere Documentation cannot be treated as a valid reason for the delay and reason, a detailed justification is to be provided.
- d) Instead of writing no information is available, in many columns it has been mentioned as "Not Applicable".
- e) Even though the retirement date of CO, is other than due date the reason for same viz. voluntary retirement or any other reason has not been mentioned.
- f) It has not been informed that the monthly pension of XXXX indicated in the Performa is in accordance with CPC.
- g) Details of any other DP cases/ court cases against the officer have not been mentioned.
- h) No statement of imputation, list of documents and lists of witness have been found along with draft article of charges.
- i) Details regarding other co-accused officers' / court cases etc. has not been found.

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9.1.3 Documentation:

- I. APAR/ ACR is either not available or if available, not duly authenticated.
- II. The case records are not arranged properly / page number or folder number is not given/ arranged properly.
- III. No forwarding letter/ self-contained note of the State Government regarding the matter is available with the proposal.
- IV. Enclosures of the IO report is not available.
- V. Page numbering of the case records has not been done or is erroneous/ not in continuation.
- VI. Case records as provided are not authenticated.
- VII. No enclosures along with the Charge- Sheet is available in the case records.
- VIII. There are some documents in regional language, translated version of which is not available / marked and when available, is not authenticated.
- IX. Translated version of the note sheet duly authenticated has not been provided.

9.1.4 Disagreement Note:

- a) It has not been informed that whether Disagreement Note of the SDA on the report of IO has been communicated to the CO.
- b) It is not clear that if there is a disagreement between State Disciplinary Authority and IO, why the IO report was shared with CO without sharing the disagreement note and why CO's representation was sought only on the IO report and not on disagreement note.
- c) A disagreement note was shared with CO after a delay of n number of years without explaining the reasons for delay.
- d) In violation of the procedure laid down in AIS (D&A) Rules, 1969, Disagreement note was shared with the CO after obtaining the representation of CO on the IO report. Also, from the perusal of the disagreement note, it was observed that it does not convey the grounds of disagreement with the IO report. It merely states the charges/ statement of imputation of charges.

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CHAPTER-10

PENALTIES AND THE AUTHORITIES COMPETENT TO IMPOSE

Introduction

10.1 When a member is adjudged guilty, by a State Government, of committing any act or omission which renders him liable to any of penalties (minor or major) except dismissal, removal or compulsory retirement, the State government shall make a reference direct to the UPSC for their advice as to the quantum of penalty to be imposed on him. The Commission would communicate their advice directly to the State Government under intimation to DoPT. The State Government issues the order of penalty. However, if the State Government does not accept the advice of Commission in a case, they will make a reference to Central Govt. in accordance with the proviso to rule 8.

10.2 In the cases of retired Member of Service, only penalty to be Imposed is cut in pension for which State Government forwards the proposal to Central Government, accordingly Central Government issues necessary orders in consultation with UPSC.

Penalties

10.3 **As per Rule 6 (1)** of AIS (D&A) Rules, 1969 the following penalties may, for good and sufficient reasons and as hereinafter provided be imposed on a member of the Service, namely: —

(a) Minor Penalties:

- (i) Censure.
- (ii) Withholding of promotion.
- (iii) Recovery from pay of the whole, or part of any pecuniary loss caused to Government, or to a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by Government, or to a local authority set up by an Act of Parliament or of the Legislature of a State, by negligence or breach of orders.
- (iv) Withholding of increments of pay.
- (v) A Reduction to a lower stage in the time scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.

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(b) Major Penalties:

- (i) Reduction to a lower stage in the time scale of pay for a specified period with further directions as to whether or not the member of the Service will earn increments during the period of reduction and whether, on the expiry of such period, the reduction will or will not have the effect of postponing future increments of his pay.
- (ii) Reduction to a lower time scale of pay, grade or post which shall ordinarily be a bar to promotion of the member of the Service to the time scale of pay, grade or post from which he was reduced, with or without further direction regarding conditions of restoration to the grade or post from which the member of the Service was reduced and his seniority and pay on such restoration to that grade or post.
- (iii) Compulsory retirement: Provided that, if the circumstances of the case so warrant, the authority imposing the penalty may direct that the retirement benefits admissible to the member of the Service under the All India Services (Death-cum Retirement Benefits) Rules, 1958, shall be paid at such reduced scale as may not be less than two-thirds of the appropriate scales indicated in Schedules 'A' and 'B' of the said rules;
- (iv) Removal from Service which shall not be a disqualification for future employment under the Government.
- (v) Dismissal from Service which shall ordinarily be a disqualification for future employment under the Government.

Provided that every case in which the charge of possession of the 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 for bearing 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.

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: —

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- i. Withholding of increments of pay of a member of the Service for failure to pass a departmental examination in accordance with the rules or orders governing the service.
- ii. Stoppage of a member of the Service at the efficiency bar in the timescale of pay on the ground of his unfitness to cross the bar.
- iii. Non-promotion of a Member of the Service, whether in a substantive or officiating capacity, to a post in the senior timescale of pay on the ground of lack of adequate length of service and experience or non-confirmation in the service, or failure to pass the departmental examination.
- iii. non-promotion of a member of the Service, whether in a substantive or officiating capacity, after due consideration of his case to the selection grade or to a post carrying pay above the timescale of pay.
- iv. Reversion of a member of the Service officiating in a higher grade or post, to which promotions are made by selection, to a lower grade or post after a period of trial not exceeding three years on the ground that he is considered unsuitable for such higher grade or post, or on any administrative ground unconnected with his conduct.
- v. Reversion of a member of the Service, appointed on probation to the Service, to State Service, during or at the end of the period of probation, in accordance with the terms of appointment or the rules and orders governing such probation.
- vi. Replacement of the services of a member of the Service whose services have been borrowed from a State Government at the disposal of the State Government concerned.
- vii. Compulsory retirement of a member of the Service under the Provisions of the All India Services (Death-cum-Retirement Benefit) Rules, 1958;
- viii. Termination of the service of a member of the Service, appointed on probation, during or at the end of the period of probation in accordance with the terms of the service or the rules and orders governing such probation.

10.4 Disciplinary Authorities –**Authority to institute proceedings and to impose penalty — (Rule – 7) AIS (D&A), 1969**

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Sl. No.	Circumstance	Authority
1.	Misconduct committed before appointment	
	If serving in connection with the affairs of State Govt. or authorities substantially owned by it	State Govt.
	In any other case	Central Government
2.	Misconduct committed after appointment	
2.1	While he was serving in connection with the affairs of a State Govt. or authorities substantially owned by it	State Government
2.2	On training (i) If the selection for the training was done by the State Govt. and the cost of the training was entirely borne by the State Govt. (ii) In any other case	State Government Central Government
2.3	On leave	The Government which sanctioned the leave
2.4	Under suspension	The Government which placed him or is deemed to have placed him under suspension
2.5	Wilful absence from duty after the expiry of leave	The Government which sanctioned the leave
2.6	Absent from duty otherwise than on leave	The Government competent before such absence from duty
2.7	In any other case	Central Government
3.	In the event of a reorganisation of the State	The Government on whose cadre he is borne after such reorganisation

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Sl. No.	Circumstance	Authority
4.	In respect of any misconduct or misbehaviour during the period he spends at the Academy/ Institute on training	<p>Director, Lal Bahadur Shastri National Academy of Administration - IAS</p> <p>Director, Sardar Vallabhbhai Patel National Police Academy - IPS</p> <p>President, Forest Research Institute and Colleges - IFS</p> <p>Empowered to institute the proceedings</p> <p>Thereafter the Director/President shall refer the case to the Central Government with the relevant records for passing orders under rule 6 in consultation with the Commission.</p>
5.	Dispute will be decided by	Central Government
6.	Penalty of dismissal, removal or compulsory retirement	Only Central Government
7.	Where the punishing Government is not the Government on whose cadre the member is borne	the latter Government shall be consulted before any penalty
8.	In the case of members of the Service borne on a Joint Cadre	The punishing Government shall consult the Joint Cadre Authority

Check List

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10.5 Wherever the decision is taken by the Central Government, the case will be forwarded by the State Government/Other Central Ministry/Department to concerned cadre controlling authority in the Central Government; namely.

- (a) Department of Personnel and Training in respect of IAS officers,
- (b) Ministry of Home Affairs in respect of IPS officers; and
- (c) Ministry of Environment and Forests in respect of IFoS officers.

DoPT vide letter dated 05th August, 2020⁷⁸ has prescribed a **check list** for forwarding the disciplinary proceedings proposals/cases to DoPT. The same check list may be used by other cadre controlling authority (MHA/ MoE, F& CC).

Concurrent Penalties

10.6 When the different penalties are ordered on different charges, all the penalties run simultaneously i.e., all the penalties will run at the same time. Order specifies that the penalties will run concurrently.

Death of Member of Service before imposing the Penalty

10.7 Where the Member of the service died after the charges are proved against him and the penalty to be imposed was decided but no final order was passed for imposition of penalty by the Disciplinary Authority, then the case should be closed without imposing any penalty⁷⁹.

⁷⁸DoPT Letter No.142/01/2019-AVD (IB) dated 05.08.2020

⁷⁹DoPT Letter No.11018/02/2008-AIS.III dated 24.06.2008

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CHAPTER-11

FINANCIAL EFFECTS OF PENALTIES

11.1 For good and sufficient reasons, the penalties detailed under Rule- 6 of All India Services (Discipline and Appeal) Rules, 1969 may be imposed on a member of the service.

11.2 The Financial effect of the penalties on a Member of the Service reflects as follows -

(i) Censure.

There is no financial effect of this penalty.

(ii) Withholding of promotion

The Order imposing the penalty should specify the period of withholding the promotion and effect on seniority after the promotion.

(iii) recovery from pay of the whole, or part of any pecuniary loss caused to Government, or to a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by Government, or to a local authority set up by an Act of Parliament or of the Legislature of a State, by negligence or breach of orders.

This penalty is in the nature of "Recovery" not a "Fine". Therefore, before imposing this penalty, the pecuniary loss caused by the Member of Service needs to be calculated.

(iv) Withholding of increments of pay.

Pay may be regulated as per Para 4 B of DoPT OM No: 11012/15/2016-Estt A-III dated 18th June 2019 as no specific instructions relating to AIS are available.

⁸⁰

[Note: Pay Scales of all AIS officers are similar as per AIS (Pay) Rules 2016 and increments are regulated in the same manner]

(iv) (a) Reduction to a lower stage in the time scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.

⁸⁰DoPT OM No: 11012/15/2016-Estt A-III dated 18th June 2019, AIS (Pay) Rules 2016

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Pay may be regulated as per Para 4 A of DoPT OM No: 11012/15/2016-Estt A-III dated 18th June 2019 as no specific instructions relating to AIS are available.

(v) reduction to a lower stage in the time scale of pay for a specified period with further directions as to whether or not the member of the Service will earn increments during the period of reduction and whether, on the expiry of such period, the reduction will or will not have the effect of postponing future increments of his pay.

Pay may be regulated as per Para 4 C of DoPT OM No: 11012/15/2016-Estt A-III dated 18th June 2019 as no specific instructions relating to AIS are available.

(vi) reduction to a lower time scale of pay, grade or post which shall ordinarily be a bar to promotion of the member of the Service to the time scale of pay, grade or post from which he was reduced, with or without further direction regarding conditions of restoration to the grade or post from which the member of the Service was reduced and his seniority and pay on such restoration to that grade or post.

Pay may be regulated as per **Para 4 D** of DoPT OM No: 11012/15/2016-Estt A-III dated 18th June 2019 as no specific instructions relating to AIS are available.

(vii) compulsory retirement:

If the circumstances of the case so warrant, the authority imposing the penalty may direct that the retirement benefits admissible to the member of the Service under the All India Services (Death-cum-Retirement Benefits) Rules, 1958, shall be paid at such reduced scale as may **not be less than two-thirds** of the appropriate scales indicated in Schedules 'A' and 'B' of the said rules;

(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.

No retirement benefits may be granted to a person who has been dismissed or removed from the Service or who has resigned from the Service:

Provided that, if the circumstances of the case so warrant the State Government may grant to a person who has been dismissed or removed from the Service a **compassionate allowance not exceeding two-thirds of the**

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retirement benefits which would have been admissible to him if he had been invalidated and not dismissed or removed from the Service.⁸¹

⁸¹ Rule 5(1) of AIS (DCRB) Rules, 1958

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS**CHAPTER-12****APPEAL, REVISION, REVIEW and MEMORIALS**

In this chapter, you will find the following:

- (i) Provisions on appeal, revision, review and memorials in respect of orders against All India Service Officers
- (ii) Any specific formats/checklists which are relevant.

12.1 Decisions taken by the Disciplinary Authority have long lasting impact on the career and reputation of individual officers against whom disciplinary proceedings have been contemplated/instituted/concluded. One of the reasons why every order issued by the Disciplinary Authority is to be a speaking order is to give satisfaction to the parties involved as to the relevance and adequacy of material on which the Disciplinary Authority has relied up on to arrive at a conclusion. The affected party, in case of disciplinary proceedings, the Suspended Officer or the Charged Officer, deserves reconsideration of the circumstances which led to a particular decision by the Disciplinary Authority by a higher authority. This is also one of the important features of the judicial system India follows. It is a common principle that the law should not be mistaken, even if there is an error of judgement on the part of one Authority. For this reason, the provisions of appeal and review find place in the statutory provisions governing the disciplinary proceedings. As per the AIS (D & A) Rules, 1969, the following procedure is to be followed in respect of appeals:

Orders which cannot be appealed against:

12.2 No appeal lies against any order made by the President; or any order of an interlocutory nature or of the nature of step-in-aid for the final disposal of a disciplinary proceeding, other than an order of suspension. There cannot be an appeal against any order passed by an inquiring authority during inquiry instituted for imposing major penalty. Appeal against any order by a competent authority withholding an appeal under rule 23 is also not maintainable.

12.3 However, the above restrictions do not apply in respect of a memorial to the President under the provisions of rule 25.

Orders against which appeal lies:

12.4 A member of the service may prefer an appeal to the Central Government against all or any of the following orders: -

- (i) An order of suspension made or deemed to have been made;⁸²

⁸² State of Tamilnadu Represented by Secretary to government (Home) Vs. Promod Kumar IPS & Another Civil Appeal No. 8427-8428 of 2018

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- (ii) An order passed by a State Government imposing any of the penalties specified in rule 6.
- (iii) An order of a State Government which—
 - a) Denies or varies to his disadvantage his pay, allowance or other conditions of service as regulated by rules applicable to him; or⁸³
 - b) Interprets to his disadvantage the provisions of any such rule; or
 - c) has the effect of superseding him in promotion to a selection post;
- (iv) An order of the State Government—
 - a. Reverting him while officiating in a higher grade or post to a lower grade or post, otherwise than as a penalty.
 - b. 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, Or
 - c. Determining his pay and allowances for the period of suspension, or from the date of dismissal, removal or compulsory retirement from service, or any other penalty.

12.5 These provisions are also applicable in respect of a person who has ceased to be a member of the Service.

Period of limitation of appeals:

12.6 The limitation period for preferring an appeal is **forty-five** days from the date on which a copy of the order appealed against is delivered to the appellant. However, the appellate authority may entertain the appeal after the expiry of the said period if it is satisfied that the appellate had sufficient cause for not preferring the appeal in time.⁸⁴

Form and content of appeal:

12.7 An appeal should be preferred by the person in his own name, addressed to the Secretary to the Government of India in the Cadre Controlling Authority in proper and respectful language by providing all material statements and arguments relied on by the appellant. Appeal should be submitted through the head of the office under whom the appellant is for the time being serving and through the Government from whose order the appeal is preferred.

⁸³ Union of India & others Vs. R.P. Singh. Civil Appeal No. 6717 of 2008

⁸⁴ Rule 17 AIS(D&A),1969

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12.8.1 On receipt of an appeal, the State Government, from whose order an appeal is preferred, may decide to withhold the appeal if it is an appeal in a case in which under these rules there is no right of appeal, or it does not comply with the provisions indicated in previous paragraph, or it is time barred and no reasonable cause is shown for the delay, or it is a repetition of a previous appeal which has already been decided and no new facts or circumstances are adduced which afford grounds for a reconsideration of the case.

12.8.2 In every case in which an appeal is withheld, the appellant shall be informed of the fact and the reasons therefor. An appeal withheld on account only of not using proper form and content may be resubmitted at any time within one month of the date on which the appellant has been informed of the withholding of the appeal. A resubmitted appeal complying with the requirements, shall not be withheld.

12.8.3 The State Government shall furnish a list of appeals withheld and the reasons for withholding the same, twice a year, to the Central Government. The Central Government may call for any appeal which has been withheld by any State Government and pass such orders thereon as the Central Government thinks fit.

12.9 Processing of other Appeals:

12.9.1 The authority which made the order appealed against shall forward the same with its comments thereon together with the relevant records to the appellate authority without any avoidable delay and without waiting for any direction from the Central Government.

12.10 Consideration of Appeal by the Central Government:

12.10.1 In respect of each appeal received, the Central Government shall consider 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 provision of the Constitution of India or in the failure of justice; whether the findings of the disciplinary authority are warranted by the evidence on record; and whether the penalty imposed is adequate, inadequate or severe and pass any of the following orders:

- I. Confirming, enhancing, reducing or setting aside the penalty; or
- II. Remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

12.10.2 It will be ensured that the Commission shall be consulted before an order confirming, enhancing, reducing or setting aside a penalty is passed. If the enhanced

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penalty which the Central Government proposes to impose is one of the major penalties and an inquiry under rule 8 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 14, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of rule 8. Thereafter, on a consideration of the proceedings of such inquiry, the Central Government may make such orders as it may deem fit.

12.10.3 If the enhanced penalty which the Central Government proposed to impose is one of the major penalties and inquiry has already been held in the case, Central Government shall make such orders as it may deem fit.

12.10.4 However, no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity of making representation against such enhanced penalty.

12.10.5 In an appeal against any other order, the Central Government shall consider all the circumstances of the case and make such orders as it may deem just and equitable.

12.10.6 Every order passed by the Central Government in appeal shall be final and the State Government concerned shall forthwith give effect to such order.

REVISION, REVIEW AND MEMORIALS**12.11 Revision**

12.11.1 The Central Government or the State Government concerned may, at any time but not exceeding 6 months from the date of the order passed in appeal or within one year of the original order which gives the cause of action, either on its own motion or otherwise call for the records of any order relating to suspension or any inquiry and revise any order made under these rules.

12.11.2 Order from which no appeal has been preferred or from which no appeal is allowed, and may confirm, modify or set aside the order; or confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed, or remit the case to the authority which made the order directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or pass such orders as it may deem fit.

12.11.3 Such an order imposing or enhancing any penalty shall be made after giving a reasonable opportunity of making a representation against the penalty proposed. If it is proposed to impose any of the major penalties or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in these clauses, inquiry shall precede imposition of penalty and after consultation with the Commission.

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12.11.4 If the original order was passed by the Central Government or the State Government concerned after consultation with the Commission, revised order will be issued only after consultation with the Commission.

Proceeding for revision shall be commenced only after the expiry of the period of limitation for an appeal, or the disposal of the appeal, where any such appeal has been preferred.

12.11.5 An application for revision shall be dealt with in the same manner as if it were an appeal under these rules.

12.12 Review:

12.12.1 The Central Government may at any time, either on its own motion or otherwise, review any order passed under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought, to its notice.

12.12.2 Any Orders imposing or enhancing any penalty shall be made by the Central Government only after giving a reasonable opportunity to the Member of the Service of making a representation against the penalty proposed. Where it is proposed to impose any of the major penalties or to enhance a minor penalty imposed by the order sought to be reviewed to any of the major penalties and if an enquiry under rule 8 has not already been held in the case, such penalty shall be imposed only after inquiry, subject to the provisions of rule 14, and after consultation with the Commission.⁸⁵

12.13 Memorials:

12.13.1 A member of the Service shall be entitled to submit a memorial to the President against any order of the Central Government or the State Government by which he is aggrieved.

12.13.2 However, memorial cannot be submitted against any order which is interlocutory in nature or of the nature of step-in-aid for final disposal of disciplinary proceedings.

12.13.3 Further such memorial can be submitted only after all other remedies provided in these rules, including appeal, review and revision have been exhausted.

⁸⁵ (1) The State of Karnataka Vs N. Gangaraj C.A. No. 8071/2014 14-02-2020 & (2) B.C. Chaturvedi Vs. Union of India & others SCC 749,1995

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12.13.4 Limitation period for submission of a memorial is ninety days from the date of passing of an order in any appeal, review or revision by the Central Government or the State Government as the case may be.

12.13.5 A memorial can be submitted by a person who has ceased to be a member of the Service as well.

Form and Content of a Memorial:

12.13.6 Every memorial shall be authenticated by the signature of the memorialist and submitted by the memorialist on his own behalf. It shall contain all material statements and arguments relied upon by the memorialist, complete in itself and end with a specific prayer. It shall not contain any disrespectful or improper language.

Action on Memorials:

12.13.7 The memorial shall be submitted through the Government (State/Central) against whose orders it is being submitted. The State Government concerned, or as the case may be, the Ministry or authority in the Central Government shall forward the same along with concise statement of facts material thereto and, unless there are special reasons to the contrary, with an expression of its opinion thereon, within thirty days from the receipt of the memorial.

12.13.8 If the original memorial along with the comments of the Ministry or the State Government concerned is not received by the Central Government within stipulated period, the Central Government shall take decision on the advance copy of the memorial received by them.

12.13.9 If the memorialist is for the time being serving under a State Government, or under a Ministry or an authority in the Central Government, which has not passed the orders against which the Memorial is submitted then, the memorial submitted through that State Government, or that Ministry or authority in the Central Government, under which he is for the time being serving shall return the memorial together with a concise statement of facts material thereto, and, unless there are special reasons to the contrary, with an expression of its opinion thereon.

12.13.10 If the memorial is against an order imposing any of the penalties specified in rule 6, such order shall be revised in consultation with the Commission.

12.13.11 The authority against whose orders a memorial is submitted under this rule shall give effect to any order passed thereon by the President.

Forwarding of advance copies:

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12.13.12 In cases where an appeal is preferred or a memorial is submitted under these rules, the appellant or the memorialist, as the case may be, may, if he so desires, forward an advance copy to the appellate authority in the case of an appeal or to the President of India in the case of a memorial.

Appeal provisions at a glance

Appeal	Revision	Review	Memorial
<ul style="list-style-type: none"> • Against orders of suspension • Against orders of penalties • Within 45 days • Can reduce, enhance, confirm, set aside penalty 	<ul style="list-style-type: none"> • Within 6 months from the date of appeal or one year when no appeal preferred. • Can confirm, reduce, enhance, set aside order of penalty 	<ul style="list-style-type: none"> • Central Govt. on its own can review. • When new evidence produced. • New penalty can be imposed only after giving opportunity 	<ul style="list-style-type: none"> • To President of India • Only after exhausting all remedies of appeal, review, revision. • Within 90 days from order to appeal / review/revision.

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CHAPTER-13

SANCTION FOR PROSECUTION

Requirement of Sanction

13.1. Criminal laws in India by way of “sanctions” allow for protective discrimination in favour of public servants. Under various laws, sanctions of the Competent Authority are required to prosecute public servants. Arguments that are often advanced in favour of such sanctions are that these ensure that:

- a. Frivolous and vexatious cases are not filed,
- b. Public officials are not harassed, and
- c. The efficacy of administrative machinery is not tampered with.

13.2. The Code of Criminal Procedure, 1973 and the Prevention of Corruption Act 1988 provide that to prosecute a public servant, permission or sanction has to be secured from the government (central or state) for which the official works. The relevant provisions are as below –

Section 197 of the Code of Criminal Procedure, 1973

13.2.1 When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

- a. In the case of a person who is employed or was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government.
- b. In the case of a person who is employed or was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression “State Government” occurring therein, the expression “Central Government” were substituted.⁸⁶

⁸⁶ Section 197 of the Code of Criminal Procedure, 1973

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13.2.2. The Prevention of Corruption Act, 1988⁸⁷

[17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties. —

No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval-

- a) In the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government.
- b) In the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government.
- c) In the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed: Provided that 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 undue advantage for himself or for any other person: further provided that the concerned authority shall convey its decision under this section within a period of **three months**, which may, for reasons to be recorded in writing by such authority, be extended by a further period of **one month**.]

Section 19. Previous sanction necessary for prosecution. —

(1) No court shall take cognizance of an offence punishable under sections 7, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]—

- a. In the case of a person who is employed, or as the case may be, was at the time of commission of the alleged offence 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, of that Government.
- b. In the case of a person who is employed, or as the case may be, was at the time of commission of the alleged offence employed in connection with the affairs of a State and is not removable from

⁸⁷ The Prevention of Corruption Act, 1988

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his office save by or with the sanction of the State Government, of that Government.

- c. In the case of any other person, of the authority competent to remove him from his office:

Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless—

- I. Such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and
- II. The court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

Explanation— For the purposes of sub-section (1), the expression “public servant” includes such person—

- a. Who has ceased to hold the office during which the offence is alleged to have been committed? or
- b. Who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed?

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13.2.3 Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the 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.

13.2.4 Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), —

- a) No finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby.
- b) No court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice.
- c) No court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

13.2.5 In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation. —For the purposes of this section, —

- i. Error includes competency of the authority to grant sanction.
- ii. A sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

13.3 From the above provisions, it is clear that in terms of Section 197(1) of CrPC, Sanction for prosecution in respect of members of the All India Services, serving in connection with the affairs of the State Government, is required to be accorded by the concerned State Government and in respect of members serving in connection with the affairs of Union Government, it is required to be accorded by the Central Government.

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In terms of Section 19(1) of PC Act, 1988 is required to be accorded by the Central Government, i.e.

- (d) Department of Personnel and Training in respect of IAS officers,**
- (e) Ministry of Home Affairs in respect of IPS officers; and**
- (f) Ministry of Environment and Forests in respect of IFoS officers.**

13.4 CVC Guidelines for the Sanctioning authorities

- A. Grant of sanction is an administrative act.
 - i. The purpose is to protect the public servant from harassment by frivolous or vexatious prosecution and not to shield the corrupt.
 - ii. The question of giving opportunity to the public servant at that stage does not arise.
 - iii. The sanctioning authority has only to see whether the facts would prima facie constitute the offence.
- B. The competent authority cannot embark upon an inquiry to judge the truth of the allegations based on representation which may be filed by the accused person before the Sanctioning Authority, by asking the I.O. to offer his comments or to further investigate the matter in the light of representation made by the accused person or by otherwise holding a parallel investigation / enquiry by calling for the record / report of his Department.
- C. When an offence alleged to have been committed under the P.C. Act has been investigated by the SPE, the report of the IO is invariably scrutinised by the DIG, IG and thereafter by DG (CBI). Then the matter is further scrutinised by the concerned Law Officers in CBI.
- D. When the matter has been investigated by such a specialized agency and the report of the IO of such agency has been scrutinised so many times at such high levels, there will hardly be any case where the Government would find it difficult to disagree with the request for sanction.
- E. The accused person has the liberty to file representations when the matter is pending investigation. When the representations so made have already been considered and the comments of the IO are already before the Competent Authority, there can be no need for any further comments of IO on any further representation.
- F. A representation after the completion of investigation is not known to law, as the law is well established that the material to be considered by the Competent Authority is the material which was collected during investigation and was placed before the Competent Authority.

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G. However, if in any case, the Sanctioning Authority after consideration of the entire material placed before it, entertains any doubt on any point the competent authority may specify the doubt with sufficient particulars and may request the Authority who has sought sanction to clear the doubt. But that would be only to clear the doubt in order that the authority may apply its mind proper, and not for the purpose of considering the representations of the accused which may be filed while the matter is pending sanction.⁸⁸

13.5 TIME LIMIT FOR GRANT OF SANCTION

In *Vineet Narain vs. Union of India* 1997, the Supreme Court affixed a time frame of three months to grant sanction. However, there was no clarity on what was to be done if sanction was not granted within such time. Following that judgment, the DSPE Act was amended in 2003, specifically requiring the CBI to secure a sanction before it investigated certain public servants.

As per the Supreme Court judgment in *Subramanian Swamy vs. Dr. Manmohan Singh & Anr*⁸⁹, Mr. Swamy's request was pending with the department for over 16 months. The Supreme Court held that denial of a timely decision on grant of sanction is a violation of due process of law (Right to equality before law read with Right to life and personal liberty). The Court reiterated the three-month time frame for granting sanctions. It suggested that Parliament consider that in case the decision is not taken within three months, sanction would be deemed to be granted. The prosecution would then be responsible for filing the charge sheet within 15 days of the expiry of this period.⁹⁰

13.6 PROCEDURE FOR GRANT OF SANCTION FOR PROSECUTION

- A. The prosecution must send the entire relevant record to the sanctioning authority including the FIR disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the material / document, if any, which may tilt the balance in favour of the accused and based on which, the competent authority may refuse sanction.
- B. The authority itself must do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

⁸⁸CVC Circular No. 005/VGL/11 dated 12.05.2005)

⁸⁹ AIR 2012 SC 1185

⁹⁰ Vineet Narain vs. Union of India 1998 (1) SCC 226

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- C. The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.
- D. The order of sanction should make it evident that the authority had been aware of all relevant facts / materials and had applied its mind to all the relevant material.
- E. In every individual case, the prosecution must establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.⁹¹

13.7 ADVICE OF CVC IN PROSECUTION CASES

Commission tenders its advice:

- (i) When the CBI or the other investigating agency recommends sanction for prosecution in cases of officers in which it is required to be accorded in the name of the President.
- (ii) In cases in which an authority other than the President is competent to accord sanction for prosecution, and that authority does not propose to accord sanction, the Commission tenders its advice for resolution of difference of opinion.
- (iii) Proposals from the State Governments seeking prosecution sanction in respect of AIS officers in the cases investigated by CBI or other investigating agency on matters pertaining to the affairs of the State Government are received in Government of India, as competent authority. The Central Government refers such cases to the CVC for its advice.⁹²

13.8 TIME LIMITS FOR FURNISHING COMMENTS

- (i) The administrative authorities are required to formulate their tentative views on the report of the CBI within three weeks.
- (ii) In case the comments of Ministry / Department / Undertaking are not received within three weeks in respect of cases where sanction for prosecution has been recommended, the Commission would tender its advice Suo motu.
- (iii) Comments received after three weeks but before 31 days, the Commission would treat it as a reconsideration request.

⁹¹CVC Circular No. 005/VGL/11 dated 25.05.2015

⁹²DoPT OM No.134/2/85-AVD-I dated 15/17.10.1986 and OM No. 399/33/2006-AVD-III dated 06.11.2006]

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- (iv) Any comments received after expiry of 31 days shall not be entertained by the Commission and would be referred to DoPT for final decision.⁹³

13.9 Reconsideration of advice

- (i) The Ministry / Department shall formulate their view on the advice of the Commission within seven days
- (ii) Refer the case to the Commission for reconsideration of its advice only in exceptional cases when new facts have come to light.
- (iii) The Commission would render appropriate advice to the competent authority within a fortnight.
- (iv) In case, the Commission on reconsideration advises for grant of sanction, the concerned Ministry / Department will issue the requisite orders immediately.
- (v) If the concerned Ministry / Department proposes not to accept the reconsidered advice of the Commission, the case will be referred to DoPT for a final decision
- (vi) The DoPT shall decide the case within three weeks and convey its decision to the concerned Ministry / Department.⁹⁴

13.10 Reference to DoPT:

(1) The DoPT being the Cadre Controlling Authority in respect of IAS officers handles the cases relating to grant of sanction for prosecution received from State Governments/Other Ministries/Departments in respect of IAS officers.

(2) The cases are also referred to DoPT in following circumstances:

- (i) In cases falling where the administrative authorities do not propose to accept the advice of the Commission for grant of sanction for prosecution, the cases should be referred to DoPT for a final decision.
- (ii) Where two or more Government servants belonging to different Ministries/ Departments, or under the control of different cadre controlling authorities are involved, the CBI will seek Sanction from the respective Ministries/ Departments or the respective competent authorities
- (iii) Where Sanction is granted in the case of one of the Government servants, but Sanction is refused in the case of the other or others, the CBI will refer the case to the DoPT for resolution of the conflict, if any, and for a final decision.⁹⁵

13.11 When officer holds charge of another post

⁹³DoPT OM No. 399/33/2006-AVD-III dated 06.11.2006 & 20.12.2006, No. 118/2/2011 dated 31.01.2012 & CVC Circular No. 33/09/10 dated 28.09.2010)

⁹⁴DoPT OM No. 134/2/85-AVD-I dated 15/17.10.1986 DoPT OM No. 399/33/2006-AVD-III dated 06.11.2006 & 20.12.2006)

⁹⁵DoPT OM No. 134/2/85-AVD-I dated 15/17.10.1986

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The protection under Section 19 (1) of Prevention of Corruption Act cannot be said to have been taken away only on the consideration that at the time the officer holds charge of another post on transfer or promotion, then one alleged to have been abused.

The requirements of seeking sanction of the competent authority under Section 19 of the Prevention of Corruption Act continues to be applicable so long as the officer continues to be a member of civil service⁹⁶.

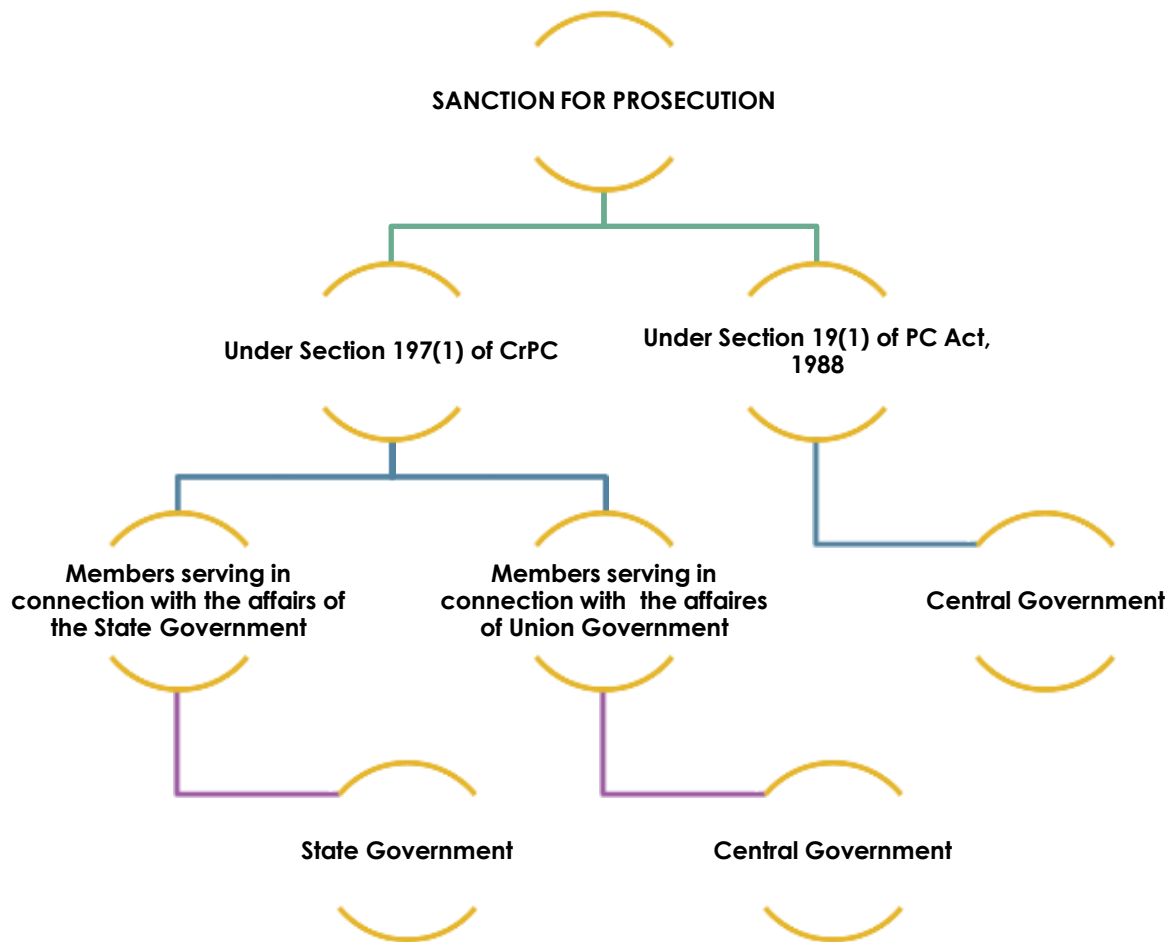
Now the PC Act 1988 has been amended and as per existing provisions the requirement of seeking sanction for prosecution has been extended even if the Member of Service has retired/superannuated.

13.12 Withdrawal from Prosecution under Section 321 of CrPC

Sometimes the prosecuting agency seeks permission to move the competent court for withdrawal of cases from prosecution under Section 321 of CrPC. In this situation the case is required to be decided by the competent authority which accorded the sanction under PC Act⁹⁷.

⁹⁶DoPT OM No. 107 /13/2007 -AVD.I dated 27th June 2008

⁹⁷DoPT OM No. 333/9/2009 -AVD.II dated 23rd October 2009

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Central Government; means.

- (a) Department of Personnel and Training in respect of IAS officers,**
- (b) Ministry of Home Affairs in respect of IPS officers; and**
- (c) Ministry of Environment and Forests in respect of IFoS officers.**

CHECK LIST

(As per DoPT OM No. 142/4/2012-AVD.I dated 28th July 2014)⁹⁸

⁹⁸DoPT OM No. 142/4/2012-AVD.I dated 28th July 2014 (It has been issued in respect of cases referred to DoPT. However, it may be used by other cadre controlling authorities)

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CHAPTER-14

COMPULSARY RETIREMENT OR PREMATURE RETIREMENT IN PUBLIC INTEREST

In this chapter, you will find the following:

- (i) Reading material on Premature Retirement in Public Interest,
- (ii) Rule-wise referencing of DoPT Letters/OMs/GIDs/ judgements,
- (iii) Extracts from important Judgements on various aspects of the rules and procedures,
- (iv) Procedure Flow chart for review,
- (v) All forms and formats required for operating the provisions.

14.1 Instructions have been issued from time to time for undertaking periodic review of performance of Government servants, including the members of the All India Services, with a view to ascertain whether the Government servant should be retained in service or retired from service prematurely, in public interest, as per Fundamental provisions/Rule referred in the subject cited above. In order to bring in better clarity to the existing instructions and enable uniform implementation, an effort has been made to review, consolidate and reiterate the guidelines so far issued on the subject at one place.

14.2 The objective of such provisions in the various service rules is to strengthen the administrative machinery by developing responsible and efficient administration at all levels and to achieve efficiency, economy and speed in the disposal of Government functions. It is clarified that premature retirement of Government servants under these rules is not a penalty. It is distinct from 'Compulsory Retirement', which is one of prescribed penalties under AIS (D & A), Rules, 1969.

14.3 Rule 16(3) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 as amended on 31.01.2012 provides that the Central Government may, in consultation with the State Government concerned, require a Member of the Service to retire from Service in public interest. The only requirement in such cases will be giving such Member at least three month's previous notice in writing or three month's pay and allowances in lieu of such notice⁹⁹.

Soundness of the Policy

14.4 The rule commonly referred to as the rule of premature retirement, is based

⁹⁹In computing the period of three months' notice referred to in this rule the date of service of the notice and the date of its expiry shall be excluded.

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on sound policy and sub serves public interest. Explaining the objects of the rule, the Supreme Court observed in the case of *Union of India Vs. M.E. Reddy and another* (AIR 1980 SCC 563) as follows:

- (i) *"The object of the Rule is to weed out the deadwood in order to maintain a high standard of efficiency and initiative in the State Services. It is not necessary that a good officer may continue to be efficient for all times to come. It may be that there may be some officers who may possess a better initiative and higher standard of efficiency and if given chance the work of the Government might show marked improvement. In such a case compulsory retirement of an officer who fulfils the conditions of Rule 16(3) is undoubtedly in public interest and is not passed by way of punishment."*
- (ii) *"Compulsory retirement contemplated by the aforesaid rule is designed to infuse the administration with initiative...so as to meet the expending needs of the nation, which require exploration of "fields and pastures new". Such a retirement involves no stain or stigma, nor does it entail any penalty or civil consequences. In fact, the rule merely seeks to strike a just balance between the termination of the completed career of a tired employee and maintenance of top efficiency in the diverse activities of administration."*

14.5 The Supreme Court also observed in the case of *State of Gujarat Vs. Umedbhai M. Patel* (Civil Appeal No.1561 of 2001, 3 SCC:320) as follows:

- a. *Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.*
- b. *Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.*
- c. *"For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer."*
- d. *Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.*
- e. *Even un-communicated entries in the confidential record can also be taken into consideration.*
- f. *The order of compulsory retirement shall not be passed a short cut to avoid Departmental enquiry when such course is more desirable.*
- g. *If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.*
- h. *Compulsory retirement shall not be imposed as a punitive measure.*

Circumstances where Premature Retirement is Justified:

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14.6 In all cases, as indicated below, it would be quite appropriate for the Government to examine the matter thoroughly in order to decide whether action under Rule 16(3) of AIS (DCRB) Rules, 1958 would be warranted:

- (i) **Lack of innovativeness and Non-achievement of Results:** Premature retirement is to be considered in case of those members of the All-India Services who tend to become mere passengers in the post or at the level in which a member is placed for the time being. Those who become either stale or listless; do not exhibit any creativity or innovativeness; and do not achieve results, can be considered for this measure.
- (ii) **Shadowed Integrity:** In some other cases, information may be available which casts grave doubt upon the integrity of a member. The form of the Annual Confidential Report/Performance Appraisal Report is designed in order to bring out, as far as possible, these tendencies or traits, which would alert Government to take suitable action under the rules. In cases where a member of an All-India Service receives a lukewarm or equivocal certificate of integrity. Such an entry would indicate that there is some doubt in the mind of the Reporting/Reviewing authority about the integrity of the member.
- (iii) **Average Performance:** In cases where the overall grade or assessment given on the performance of a member of an All-India Service is "average" can also be considered for this measure. Though it may not be an adverse remark, it is nevertheless being a reflection upon his work or conduct and should be taken to indicate output, which is ordinary and routine. Remarks like "Adequate" and "Satisfactory" over a period of 5-7 years, without mention of any notable achievement, would also indicate that the member has reached a plateau.

Procedure to be followed:

14.7 Such retirement can be ordered after the review when such Member (i) completes 15 years of qualifying Service; or (ii) after the review when such Member completes 25 years of qualifying Service or attains the age of 50 years, as the case may be; or if the review referred to in (i) or (ii) above has not been conducted, after the review at any other time as the Central Government deems fit in respect of such Member.

14.8 The term "Review" in this provision means the review of the entire service record of the Member of the Service regarding suitability or otherwise of such Member for further retention in the Service, to be conducted regularly of each Member of such Service. In the case of the State Service Officers appointed to an All India Service by promotion or by selection, they should have completed a minimum of 5 years of actual service in the respective All India Service.

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14.9 Further, in the case of a member of Service who retires / is retired under this rule, the date of retirement shall be treated as a non-working day.

14.10 The officers who will be retired prematurely shall be entitled for pensionary benefits in terms of the relevant provisions of All India Services (DCRB) Rules, 1958.

14.11 The Government of India clarified¹⁰⁰ that the State Governments are free to initiate action and suggest the compulsory retirement in public interest of AIS officer who have put in 30 years of qualifying service or have attained the age of 50 years after giving them three months' notice in writing. The recommendations of the State Governments in these matters would be given due consideration.

14.12 According to rule 16(3), the orders in each case would need to be issued by the Central Government but the formal Notification giving effect to the above orders would be issued by the State Government.

Composition of Review Committee¹⁰¹

14.13 The State Government shall set up committees for reviewing the records of member of the Service borne on their cadres. The composition of the Review Committees shall be as under:

For IAS:

S. No.	Designation	Position in the Committee
1	Chief Secretary	Chairperson
2	One officer in the apex scale in the cadre/Joint cadre concerned	Member
3	One officer in the apex scale from outside the cadre/joint cadre and who has not declared such cadre/joint cadre as his Home State*	Member
4	One officer in the grade of Principal Secretary in the cadre/Joint cadre concerned representing SC/ST community	Member
5	Principal Secretary / Secretary, Department of Personnel in the cadre/Joint cadre	Member Secretary

For IPS:

S. No.	Designation	Position in the Committee
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¹⁰⁰ MHA letter No.9/10/64-AIS(II) dated the 16th March, 1966.

¹⁰¹ DoPT Letter No.25013/02/2005-AIS.II dated 28th June 2012

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1	Chief Secretary	Chairperson
2	DG Police (Head of the Police Force) in the cadre/Joint cadre concerned	Member
3	One DG Police level officer from outside the cadre/joint cadre and who has not declared such cadre/joint cadre concerned as his Home State*	Member
4	One officer in the grade of Principal Secretary in the cadre/Joint cadre concerned representing SC/ST community	Member
5	Principal Secretary / Secretary, Department of Home in the cadre/Joint cadre	Member Secretary

For IFS:

S. No.	Designation	Position in the Committee
1	Chief Secretary	Chairperson
2	PCCF (Head of the Forest Force) in the cadre/Joint cadre concerned	Member
3	One PCCF level officer from outside the cadre/joint cadre and who has not declared such cadre/joint cadre as his Home State*	Member
4	One officer in the grade of Principal Secretary in the cadre/Joint cadre concerned representing SC/ST community	Member
5	Principal Secretary / Secretary, Department of Forests in the cadre/Joint cadre	Member Secretary

* For the nomination of member in the Committee from outside the cadre, the Chief Secretary of the State Government for which the Review Committee is proposed to be set up shall write in advance to the Chief Secretary of other cadre (s) for nomination of an officer of the appropriate grade/rank to function as a Member of the Committee. If any State faces any difficulty in this regard, the matter should be referred forthwith to the Central Government.

Further procedure

14.14 The records of the members of the Service who are on deputation to the Centre or to any other Government or on foreign service/assignment are also required to be reviewed by the Review Committee and its recommendations placed before the State Government.

14.15 The recommendation of the State Government along with attested copies of proceedings of the Review Committee shall be forwarded to the Department of

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Personnel & Training in the case of the Indian Administrative Service, the Ministry of Home Affairs in the case of the Indian Police Service and the Ministry of Environment, Forests and Wildlife in the case of the Indian Forest Service.

14.16 Where any reference to the deputation of an officer or to disciplinary proceedings is made by the Review Committee or the State Government, necessary details should be furnished to the Central Government.

14.17 Where the State Government have concluded as a result of the review that a member of the All-India Service should be retired from service in the public interest, they should make a proposal accordingly to the Central Government giving full reasons in justification of the proposal. Similarly, where the Central Government are of the opinion that an officer should be retired from service in the public interest, the Central Government shall seek the views of the State Government concerned

14.18 The Central Government shall observe the following procedure for processing the recommendations made by the State Government: -

- (i) Where the State Government have recommended the retention of an officer in service but the cadre controlling authority comes to the conclusion that the officer should be retired from service in the public interest, the case shall be placed before the Appointments Committee of the Cabinet for orders.
- (ii) Where the State Government have recommended the retirement of an officer in the public interest, the case shall be placed before the Appointments Committee of the Cabinet (whether or not the cadre controlling authority agrees with the recommendation of the State Government or comes to the conclusion that the officer should be retained in service).

Timetable for Review

14.19 The review should be carried out within six months of the date on which an officer completes 15 years of qualifying service or 25 years of qualifying service or attains the 50 years of age (as the case may be) so that a decision could be taken by the Central Government regarding the suitability, or otherwise, of the officer concerned for further retention in service. However, preparation for the review should begin in advance so that the entire exercise can be completed as per the time schedule.

14.20 In the case of the State Service Officers appointed to an All India Service by promotion or by Selection, the review may be undertaken after they complete at least 5 years' service after their appointment to the All India Service. If such an officer completes 15 years of qualifying service or 25 years of qualifying service or attains 50 years of age after he has already put in 5 years of service after his promotion/selection,

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the review will be undertaken in the normal course. In other cases, ordinarily the review shall be undertaken after he has put in 5 years of actual service after appointment to the All India Service.

14.21 In order to ensure that the review is undertaken regularly, it is desirable that the State Government should maintain service-wise registers of the members of the IAS/IPS/IFS borne on their cadre who are due to complete 15/25 years of qualifying service or attain the age of 50 years. These registers should be scrutinized periodically, and the review undertaken according to the following Schedule and a half-yearly return should be sent to the Central Government.

Half year period during which review is to be made	Cases of officers who complete 15/25 years of qualifying service or attain the age of 50 years in the half-year period indicated below to be reviewed
January to June	July to December of the previous year
July to December	January to July of the same year

14.22 In case a member of the Service refuses to accept the service of notice of retirement or order of retirement, along with the cheque/cash equivalent of 3 months' pay and allowances it should be ensured that the refusal of the member of the Service is witnessed by two Gazetted officers. The notice of retirement shall be effective from the forenoon of the date following the date of refusal of the notice by the member of the Service. A copy of the notice/order of retirement may also be sent to the officer under Registered post with Acknowledgement due at the last officially known address.

Delayed Review

14.23 Where the review in accordance with the time schedule indicated above has not been completed for any reason whatsoever, on a member of the Service attaining 50 years of age, such review may be undertaken at any time thereafter.

14.24 In case the review has not been conducted in case of a Member of Service after completion of 15 years of qualifying service or 25 years of qualifying service or on attaining 50 years of age such a Member of Service can be retired after a review at any other time as the Central Government deems fit. For such cases, the State Government(s) can make a reference to the Central Government with full facts and justifications for conducting such a review. The State Government shall carry out such a review after obtaining the concurrence of the Central Government and send its recommendations to the Central Government.

Important Judgements

14.25 PNJ has no place

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Baikuntha Nath Das and Anr. Vs. Chief Distt. Medical Officer, 1992 AIR 1020, 1992 SCR (1) 836:

“The following principles emerge from the above discussion:

- I. An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
- II. The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.
- III. Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary - in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be perverse order.
- IV. The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.
- V. An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interfere. Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 29 to 31 (not included here in the extracts) above.”

14.26 Total record of the Officers is to be looked into.

R.L. Butail Vs UOI and Another 1970 (2) SCC 876:

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It may well be that in spite of the work of the appellant being satisfactory, as he claimed it was, there may have been other relevant factors such as the history of the appellant's entire service and confidential reports throughout the period of the service, upon which the appropriate authority may still decide to order appellant's retirement under FR 56(j).

14.27 Total record of the Officers is to be looked into

State of Gujarat Vs. Umedbhai M. Patel (Civil Appeal No.1561 of 2001, (2001) 3 SCC: 320:

"For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer."

"Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

Even un-communicated entries in the confidential record can also be taken into consideration.

If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer."

14.28 Review Committee can rely on any particular remark in integrity which has not been communicated to the officer, or if the remark is of a general nature.

Union of India Vs. M.E. Reddy:

"Under the various rules on the subject, it is not every adverse entry or remark that has to be communicated to the officer concerned. The superior officer may make certain remarks while assessing the work and conduct of the subordinate officer based on his personal supervision or contact. Some of these remarks may be purely innocuous or may relate to general reputation of honesty or integrity that a particular officer enjoys."

14.29 It is not necessary that the adverse remarks in APAR/personal file contain specific instances.

R.L. Butail Vs U01 and another — 1970 (2) SCC 876:

"The contention, therefore, that the adverse remarks did not contain specific instances and were, therefore, contrary to the rules cannot be sustained. Equally unsustainable is the corollary that because of that omission, the

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appellant could not make an adequate representation and that therefore, the confidential reports are vitiated."

14.30 Departmental Enquiry + Other material to justify Premature retirement.

Uttar Pradesh Vs Chandra Mohan Nigam and Others (AIS 1977 SC: 2411): -

"We should hasten to add that when integrity of an officer is in question that will be an exceptional circumstance for which orders may be passed in respect of such a person under rule 16(3), at any time, if other conditions of that rules are fulfilled, apart from the choice of disciplinary action which will also be open to Government."

14.31 If conduct and reputation is such that his continuance in service would be a menace to public service and injurious to public interest, then premature retirement is justified.

S. Ramchandra Raju vs State of Orissa [(1 994) 3 SCC 424]:

"The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation are such that his continuance in service would be a menace to public service and injurious to public interest. The entire service record or character rolls or confidential reports maintained would furnish the backdrop material for consideration by the Government or the Review Committee or the appropriate authority. On consideration of the totality of the facts and circumstances alone; the Government should form the opinion that the Government officer needs to be compulsorily retired from service. Therefore, the entire record more particularly, the latest, would form the foundation for the opinion and furnish the base to exercise the power under the relevant rule to compulsorily retire a government officer."

14.32 All material on record, including the actions or decisions taken by the employee which do not appear to be above board, complaints received against him, or suspicious property transactions, for which there may not be sufficient evidence to initiate departmental proceedings, may also be taken into account.

K. Kandaswamy vs. Union of India & Anr, 1996 AIR 277, 1995 SCC (6) 16: -

"The rights - constitutional or statutory - carry with them corollary duty to maintain efficiency, integrity and dedication to public service. Unfortunately, the

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latter is being overlooked and neglected and the former unduly gets emphasised. The appropriate Government or the authority would, therefore, need to consider the totality of the facts and circumstances appropriate in each case and would form the opinion whether compulsory retirement of a government employee would be in the public interest. The opinion must be based on the material on record; otherwise, it would amount to arbitrary or colourable exercise of power."

14.33 Reports of conduct unbecoming of a government servant may also form basis for compulsory retirement.

State of U.P. and Others vs Vijay Kumar Jam, Appeal (civil) 2083 of 2002:

"If conduct of a government employee becomes unbecoming to the public interest or obstructs the efficiency in public services, the government has an absolute right to compulsorily retire such an employee in public interest."

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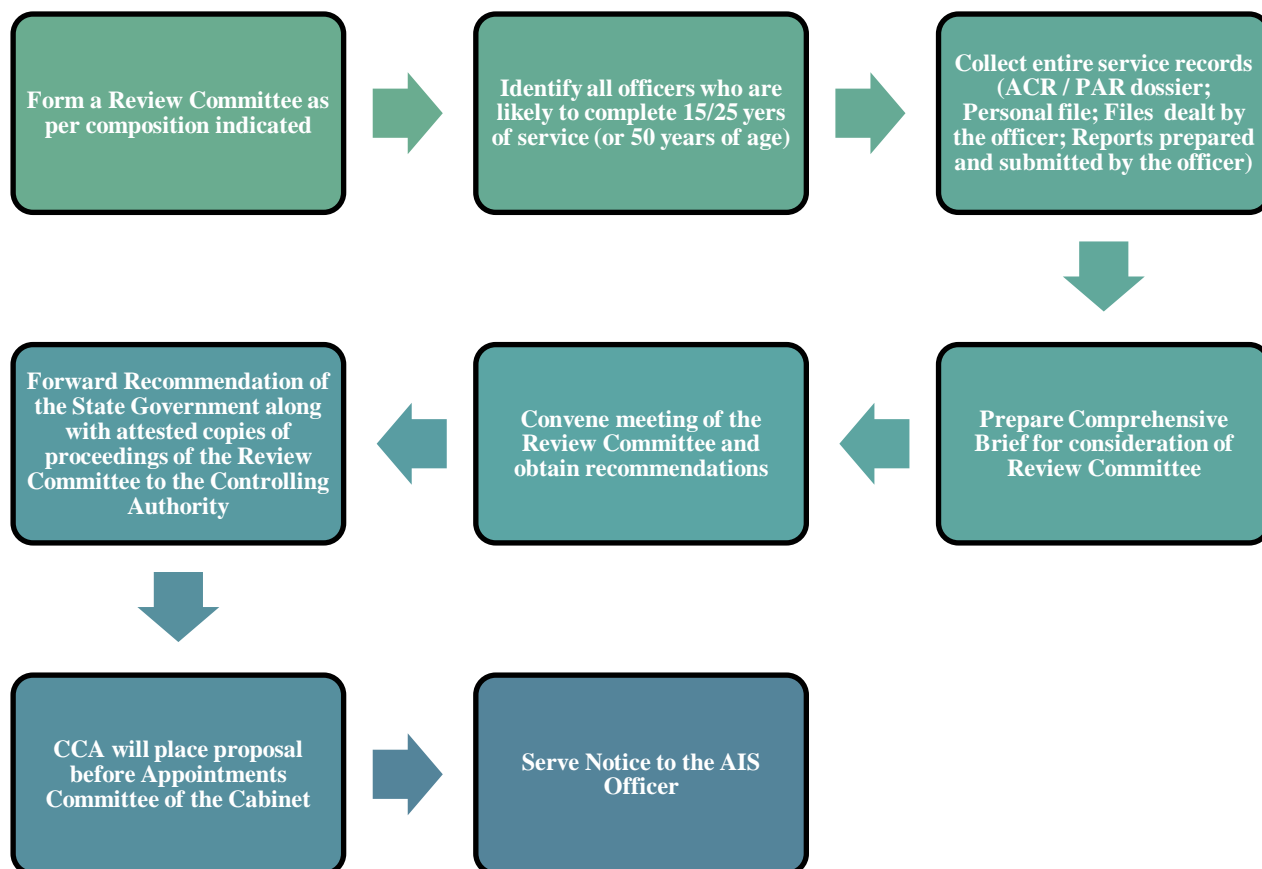
Premature Retirement under AIS (DCRB) Rules

Suggested checklist for review:

S. No.	Particulars	Data
1	Where working at present Central Deputation/State Government (specify State)	
2	Name of the Officer to be reviewed	
3	Designation	
4	Date of Birth	
5	Age as on 1 st July/ 1 st January of _____	
6	Date since holding the post in the current designation	
7	Leave availed during the past five years (from the Service Book)	
8	State of health and whether it has a bearing on discharge of duties and if yes, please elaborate	
9	Whether services of the officer are considered useful to the Government?	
10	Whether the Officer is considered competent and effective and fit to continue to hold post occupied?	
11	Is there any reason to doubt the integrity, viz. complaints of suspicious transaction in property, corruption, information, feedback, etc., if yes, Please specify.	
12	APAR grading	
13	Overall conduct of the officer and remarks, if any	

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Procedure Flowchart for Review



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CHAPTER-15

SELECT CASE LAW ON INQUIRY RELATED ISSUES

S. No	Subject	Judgement details
1	Disciplinary inquiry to be held as per Principles of Natural Justice	Chandrama Tewari vs Union of India 1987, Supp. SCC 518; AIR 1988, SC 117
2	The Standard of Proof, mode of inquiry and rules governing the enquiry and trial are distinct and different	State of Rajasthan vs B.K. Meena 1996,6 SCC 417; 1996 SCC (L&S)1455
3	Failure to give details of witnesses recorded during Preliminary enquiry to the Charged Officer amounts to denial of reasonable opportunity	State of U.P vs Mohd. Sharif 1982(2) SLR 265
4	Charge should be specific in nature	Choudhary vs Union of India, AIR 1956, Cal. (662)
5	Non supply of irrelevant documents during the inquiry to the Charged Officer is not the denial of reasonable opportunity	Ram Singh Dhaman vs State of Punjab, 57 Punj. LR 763
6	If punishment is indicated in the charge sheet, it suggests prejudging the case	Rallapally Satyanarayana vs. State of A.P (1967) 2 An. WR 253
7	Where Charge memo was sent through the Registered post, but the accused refused to accept the registered post amounts to valid service of the post to the charged officer	Jagdish Sekhri vs Union of India 1970, SLR 571 (Delhi)
8	An officer who is the complainant or a principal witness cannot be the inquiry officer	Madhi Ram vs D.F.C Nabha AIR 1955, Pepsu 172
9	An order removing the civil servant who was unauthorised absent for over Five years, without referring to the Vigilance Commission is NOT illegal	Mohd. Quamaruddin vs state of A.P (1994) 5 SCC 118
10	Any petition filed in the courts challenging a charge sheet without submitting a statement of defence will be dismissed as premature	Union of India vs Ashok Kacker, 1995 (7) SLR (SC) 430
11	Courts can interfere in disciplinary proceedings only when the finding is perverse or based on no evidence	Kuldeepsingh vs Commisisoner of Police and others 1999(2) SCC 10: 1999(86) AIR 677
12	Departmental proceedings and Proceedings in a criminal case can be conducted simultaneously	Kusheshwar Dubey vs Bharat Cooking coal Ltd (1988) 4 SCC 319: AIR 1988 SC 2118

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S. No.	Subject	Judgement details
13.	"Disciplinary Authority shall draw or cause to be drawn up" the charge sheet. Proceedings initiated without the Approval of the Charge Sheet by the Disciplinary Authority are non-est	Union of India Vs. B V Gopinath [(2014) 1 SCC 351] Judgment dated 06.09.2013 in Civil Appeal No. 6348 of 2011
14.	"If it was a case of misutilisation or misappropriation, the Appellant should have been told thereabout specifically. Such a serious charge could not have been enquired without framing appropriate charges."	MV Bijlani Vs. Union of India [(2006) 5 SCC 88] Judgment dated 05.04.2006 in appeal (civil) 8267 of 2004
15.	"..... only on the ground of delay the entire proceedings can be quashed without considering the other relevant factors therefor...."	Government of A.P. And Ors vs V. Appala Swamy [(2007) 14 SCC 49] Judgment dated 25 January 2007 in appeal (civil) 393 of 2007
16.	".... It may be true that delay itself may be a ground for arriving at a finding that enquiry proceeding was vitiated in the event it is shown that by reason thereof the delinquent officer has been prejudiced,"	P.D. Agrawal Vs. State Bank of India and Others 2006(8) SCC 776
17.	Proceedings are liable to be set aside on grounds of Vague Charges	Anil Gilurker Vs. Bilaspur Raipur Kshetria Gramin Bank & Anr. (2011) 14 SCC 379 Judgment dated 15 Sep 2011 in Civil Appeal No. 7864-7865 of 2011
18.	"An enquiry is to be conducted giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges"	Union of India & Ors. v. Gyan Chand Chattar [(2009) 12 4 SCC 78], Judgment dated 28 May 2009 in Civil Appeal No. 4174 of 2003
19.	"...Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice."	State Bank of Patiala & Ors. Vs. S. K. Sharma [(1996) 3 SCC 364]
20.	"40. The Constitution Bench has clearly laid down that even after the charges which have been proved, justify imposition of penalty, the court may not exercise its power of judicial review."	Deputy General Manager Vs. Ajai Kumar Shrivastava Judgment dated 05.01.2021 in SLP(C) No(s). 3206732068 of 2018

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21.	"There is no proposition of law or rule of universal application that if there is a delay, the departmental proceedings must be necessarily quashed."	Om Prakash vs Delhi Society for Prevention of Cruelty Of Animals &Ors. Delhi High Court Judgement dated 21 September 2011 in LPA No. 287/2011
22.	The disagreement note has necessarily to be tentative in nature	Punjab National Bank Vs. Kunj Behari Misra (1998) 7 SCC 84
23.	"The disagreement note has necessarily to be tentative in nature any indication that the DA had decided, even before the charged officer had an opportunity to respond in that regard, that the charges stood proved, vitiates the exercise of disagreement in its entirety"	Delhi High Court in Judgment dated 26.03.2021 in WP (C) No. 7401/2017 [Sunil Kumar Nagpal Vs. Central Bank of India &Ors] Relying on Punjab National Bank Vs. Kunj Behari Misra (1998) 7 SCC 84
24.	".... if the order of punishment can be justified even on some of the articles of charge held to be proved against the delinquent employee, and no case for interference with the findings qua the said articles of charge is made out, the High Court would not re-visit the order of punishment of the delinquent employee."	Delhi High Court in Judgment dated 26.03.2021 in WP (C) No. 7401/2017 [Sunil Kumar Nagpal Vs. Central Bank of India &Ors] Relying on Deputy General Manager v. Ajai Kumar Shrivastava [(2021) 2 SCC 212]
25.	"Of course, even in an ex parte inquiry, some evidence is necessary to establish the charges, especially when the charged officer denies the charges, uncontroverted documentary evidence in such situation is sufficient to prove the charges." "In some cases, proof may only be documentary and in some cases oral. The requirement of proof depends on the facts and circumstances of each case."	State Bank of India and Ors. Vs. Narendra Kumar Pandey [2013 (2) SCC 740.] Judgment dated 14.01.2013 in CIVIL APPEAL NO. 263 OF 2013
26.	Circumstances under which disciplinary action can be initiated against quasi-judicial functions illustrated	Union of India Vs. K.K. Dhawan 1993 SCC (2)56; JT 1993 (1)236 Judgment dated 27 .01.1993
27.	"28. Considering the facts and circumstances of the case, none of the charges are specific and precise. The charges have not been accompanied by any statement of allegations, or any details thereof. It is not therefore permissible, for the respondents to hold an enquiry on such charges."	Anant R Kulkarni vs Y.P. Education Society &Ors. [(2013) 6 SCC 515, Judgment dated 26.04.2013 in Civil Appeal No. 3935 of 2013

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28.	“9. It is a settled legal proposition, that once the Court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the Court cannot reinstate the employee. It must remit the concerned case to the disciplinary authority, for it to conduct the enquiry from the point that it stood vitiated, and conclude the same”	Chairman LIC of India & Ors Vs A. Masilamani [(2013) 6 SCC 530] Judgment dated 23.11.2012 in Civil Appeal No. 8263 Of 2012
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Judgements related to Penalties**15.2 Recorded warning is equivalent to ‘censure’ – Hence cannot be inflicted without serving charge sheet – Warning served based on show-cause notices held invalid.**

In *S.S Roy Vs. Union of India: (1992) 20 ATC 423*: relying on *Nadhan Singh Vs. Union of India: 1969 SLR 24 (Delhi HC)* and *V.K. Gupta Vs. Union of India: (1989) 9 ATC 577*: held that –

“10. ... Recordable warning is nothing but censure which is one of the minor penalties in Rule 11 of the CCS (CCA) Rules, 1965.

13. The recordable warning, which is kept in the confidential dossier of a Govt. servant, will be looked into by the Departmental Promotion Committee at the time of his promotion and may otherwise adversely affect his service prospect. In view of this and having regard to the aforesaid rulings, we have no doubt in our mind that the impugned memo Dated 4-3-1987 issued to the applicant, is liable to be set aside and quashed on the ground of non-compliance with the provision of Rule 16 of CCS (CCA) Rules, 1965 which lays down the procedure for imposing a minor penalty on a government servant.”

15.3 Displeasure is not a penalty under Rule 10 and therefore it cannot come in the way of promotion.

In *J.N.T. Ramani Vs. State of M.P: 1994 MPLSR 65*: a show-cause notice was issued to him on 16-11-1988 alleging that Smt. Rekha Pancholi, an Anganwadi worker was appointed irregularly as ‘Mukhya Sevika’ in violation of instruction Dated 18-2-1983 prescribing maximum age limit up to 30 years whereas the age of Smt. Pancholi was 34 years. Thus, by intentional breach of the instructions, he irregularly appointed her. He was thus charged with misuse of office and violation of Government instructions. Penalty of censure was imposed on him for the misconduct. Later, the applicant’s appeal was accepted considering the advice of PSC, the punishment of censure was

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set aside on 28-5-1993. Instead, the displeasure of the State Govt. for the negligence shown by him was recorded in his C.R. then SAT observed thus-

“8. ... Recording of displeasure is not one of the punishments prescribed under Rule 10 of CCA Rules, 1966. Therefore, also it cannot be accepted that any penalty was imposed on him in the disciplinary proceeding. Therefore, it must be held that applicant was exonerated of the charge framed against him in the disciplinary proceeding and he is entitled to get the sealed cover opened and for promotion if recommended by the DPC.”

15.4 Employee has right to be considered for promotion and not a right to promotion – if employee is visited with any penalty in disciplinary proceedings or found guilty by Criminal Court, his case for promotion may be considered in usual manner by next DPC- Sealed cover procedure will be acted upon.

In Union of India Vs. K.V. Jankiraman: AIR 1991 SC 2010: observed thus –

“29. ... In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the tribunal has not intended that the promotion should be given from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reason, the officer cannot be awarded by promotion as a matter of course even if the penalty is other than of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect public interest. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion. He is treated differently. The least that is expected of any administration is that it does not award an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct.”

15.5 Stoppage of increment with cumulative effect is major penalty – imposition of such penalty without conducting regular inquiry is illegal- Mere service of show- cause notice preceding the order imposing such penalty not enough.

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In *Kulwant Singh Gill Vs. State of Punjab: 1991 SCC (L&S) 998*: the only question that needs decision was whether stoppage of increment with cumulative effect is a major penalty?

With-holding of increment of pay simpliciter is a minor penalty under sub-rule (iv). But sub-rule (v) postulated reduction to a lower stage in the time scale of pay for a specified period with further directions as to whether the Government servant shall earn increments of pay during the period of such reduction and whether on expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay. Held-

"4. ... sub-rule (iv) does not empower the disciplinary authority to impose penalty of with-holding increments of pay with cumulative effect except after holding inquiry and following the prescribed procedure. Then he would be without jurisdiction or authority of law, and it would be per se void. Considering from this angle we have no hesitation to hold that the impugned order would come within the meaning of sub-rule (v) of the Rules; it is a major penalty and imposition of the impugned penalty without enquiry is per se illegal."

15.5 Reversion – Direct recruit- temporary or permanent – cannot be reverted to a lower post – only promotee can be reverted to the post from which he was promoted.

In *Hussain Sasan Saheb Kaladgi Vs. State of Maharashtra: AIR 1987 SC 1627*: the appellant was a direct recruit to the post of Assistant Deputy Educational Inspector. He was served with an order dated 28-04-1965 reverting him to the post of a Primary Teacher. The Supreme Court held thus –

"2. ... A direct recruit to a post, it cannot be gainsaid, cannot be reverted to a lower post. It is only a promote who can be reverted from the promotion post to the lower post from which he was promoted. ... the State had passed an order which clearly was unsustainable since the appellant was a direct recruit and there was no question of reverting him to any lower post."

15.6 Compulsory retirement – Employee convicted for assaulting his superior- Order of compulsory retirement was quashed by CAT – Held, the employee appears to have been dealt with lightly – The CAT misunderstood the scope of its powers and erred in interfering with the order of compulsory retirement.

Badri Nath Vishwakarma, while working as technician in P&T Department assaulted his superiors for which he was prosecuted. He was convicted of the offence and the conviction was maintained up to the HC. Thereafter, he was compulsorily retired vide order dated 10-05-1982. He was paid the retiral benefits on his compulsory retirement. He challenged the order and by order dated 3-9-1992 of CAT, the order of compulsory

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retirement was quashed but was not awarded back wages. CAT's order quashing the compulsory retirement order was challenged.

In *Union of India Vs. Badri Nath Vishwakarma*: 1994 SSC (L&S) 1015 "it was held:

"5. The undisputed facts of this case are sufficient to indicate that there can be no ground for interfering with the compulsory retirement of the respondent who appears to have been dealt with lightly notwithstanding his conviction under Sec. 332 IPC for assaulting his superior officers. The compulsory retirement made in these circumstances together with grant of all retiral benefits was the least action, which could have been taken against the respondent. The Tribunal clearly misunderstood the scope of its power in a case like this and clearly erred in interfering with the order of compulsory retirement or grounds, which, in our opinion, were not available to it. The tribunal's order has; therefore, to be set aside, insofar it has quashed the order of compulsory retirement of the respondent."

15.8 Termination – It is the duty of the Government to justify its action by proper pleadings or by producing records – Failure of Govt. to produce any record, termination declared invalid – Appeal allowed with costs.

Vijay Narain Singh was appointed as Constable on probation in a clear vacancy in 1986. After completion of the training, in December 1990 a report was made by the Station House Officer accusing him of certain misconduct. Without holding any inquiry, on 19-12-1990 his services were terminated by giving him one month's salary in lieu of notice. He challenged it in Allahabad HC. It was dismissed on 20-07-1991. Hence appeal by special leave. HC had taken the view that the services being merely temporary, there was no infirmity in the termination.

In *Vijay Narain Singh Vs. Supdt. of Police, Bijnore*: 1994 SSC (L&S) 796: allowing the appeal with costs it was held thus:

"4. The appellant has expressly asserted that his appointment as a constable was on probation in a clear vacancy. On behalf of the State of U.P., there is no denial of this assertion, and no material has been produced by the State to indicate that the appellant's appointment was not of this nature. There can be no doubt that the State which is in possession of the entire record was not able to show with reference to the record that the factual position was different. The failure of the State Govt. to produce any record in support of its submission is alone sufficient to reject its submission to this effect. The case has, therefore, to be examined on the basis that the appellant's appointment was on probation in a clear vacancy."

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5. ... Admittedly that procedure was not adopted before terminating the appellant's services. The order of termination is, therefore, obviously invalid."

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CHAPTER-16

**Sample Forms for Charge Sheet, Order imposing Penalty, Daily Order Sheets
Summoning of Witnesses, General Examination, Inquiry Report etc.**

1. STANDARD FORM FOR ORDER OF SUSPENSION

ORDER

Whereas a disciplinary proceeding against Shri... (Name and designation)
is contemplated/pending under investigation/ Inquiry/trial

Or whereas a case against Shri... (Name and designation) in respect of a
criminal offence is contemplated/pending under investigation/ Inquiry/trial.

2. Now, therefore, the(Authority competent to place under suspension), in
exercise of powers conferred by clause(a) of sub-rule (i) of rule 3 of the All India
Services (Discipline and Appeal) Rules,1969, hereby places the said Shri.....under
suspension with immediate effect.

3. It is further ordered that during the period that this order shall remain in force,
the Headquarters of Shri shall be.....(name of place and the said Shri
shall not leave the said Headquarters without obtaining the permission of the
undersigned.

(By order and in the name of the President/Governor)

Signature.....

Copy to

- i. Shri (Name and designation): Order regarding subsistence allowance
admissible to him during the period of his suspension will be issued separately.
- ii. D.D.O/cash section
- iii.

Note:

1. Copies should be endorsed: -
 - i. to the Pay and Accounts Officer who authorizes the drawal of his salary;
 - ii. to the Cash and Accounts Section of the Department;
 - iii. to the Establishment Section for making an entry in the Service Book;
 - iv. to the Appointing Authority, if the order is made by some other authority;
and;
 - v. to the Lending Authority in the case of borrowed officer.
2. The reasons for suspension should be communicated to the Appointing
Authority and the Lending Authority, separately, through confidential letters.

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2. STANDARD FORM FOR ORDER OF DEEMED SUSPENSION ORDER

WHEREAS a case against Shri..... (Name and designation of the member of the service) in respect of a criminal offence is under investigation/inquiry/trial;
AND WHEREAS the said Shriwas detained in custody on for a period exceeding forty—eight hours.

NOW, THEREFORE, the said Shri.... is deemed to have been placed under suspension by an order of the appointing authority w.e.f in terms of sub rule.....of rule 3 of the All India Services (Discipline and Appeal) Rules, 1969 until further orders.

(By order and in the name of the President/Governor)

Signature.....

Copy to

Shri(name and designation). Order regarding subsistence allowance admissible to him during the period of his suspension will issue separately.

Note: — Copies should be endorsed to the Pay and Accounts Officer who authorizes the drawal of his salary; to the cash and Accounts Section of the Department; to the Establishment Section for making an entry in the Service Book; to the Appointing Authority, if the order is made by some other authority; and to the Lending Authority in the case of borrowed officer. The reasons for suspension should be communicated to the Appointing Authority and the Lending Authority, separately, through confidential letters.

3. STANDARD FORM FOR REVOCATION OF ORDER OF SUSPENSION ORDER

WHEREAS an order placing Shri(name and designation), under suspension, was made/was deemed to have been made by.....on.....
Now, therefore, the President/Governor, in exercise of the powers conferred by Rule.....(here mention the relevant rule) hereby revokes the said order of suspension, with immediate effect.

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

Signature.....

(Name and
Designation)

Copy to

Shri..... (Name, designation and address of the officer during suspension).

Copies should also be endorsed to the Treasury Officer/Pay and Accounts Officer, to the Cash and Accounts Section of the Department; to the Establishment Section for making an entry in the Service books to the Appointing Authority, if the order is made by some other authority; and to the lending authority (in case of a borrowed officer).

4. Form of order of suspension (where a case has been registered and it is under investigation)

Order

Whereas it has come to the notice of the Government of (concerned state) (Appointing authority or any other competent authority) alleging that

And whereas a case has been registered by the Anti-Corruption Bureau Officer in charge of the Police Station in Crime No. under section of

And whereas it is considered that his/her continuance in Office will prejudice the investigation.

And whereas the Government of (State)/ President after careful consideration of the material and having due regard to the circumstances of the case that the criminal charge under investigation is connected with his official position of the Government servant and involves moral turpitude and therefore consider placing Shri/ Smt..... under suspension.

Now, therefore, in exercise of the powers conferred by sub-rule (1) of Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969,) Governor/ President hereby place(s) the said Shri/ Smt..... under suspension from the date of communication of this order and he/she shall continue to be under suspension until the conclusion of the disciplinary proceedings/termination of all proceedings relating to the criminal charge(s) or till further orders whichever is earlier

It is further ordered that during the period this order remains in force, the headquarters of Shri/ Smt..... (Name and designation of the Government servant) shall be (name of the place) and the said Shri/Smt.....

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shall not leave the headquarters without obtaining the previous permission of the undersigned.

"If is further ordered that during the period of suspension, Shri/Smt (Name and designation of the Government Servant) shall be paid subsistence allowance equivalent to the leave salary on half pay leave. The D.A. and other compensation allowances shall be paid along with subsistence allowance. The quantum of subsistence allowance will be reviewed and revised in terms of Rule-4 of AIS (D&A) Rules, 1969 after 3 months. Pending review, he shall continue to draw the subsistence allowance now sanctioned.

(By order and in the name of the President/Governor)

Signature....

(Name & Designation)

(Authority competent to authenticate order in the name of
President/Governor

5. Form of order of suspension (where charge sheet has been issued)

Order

Whereas the Government of (State) appointing/any other competent authority consider it necessary to place Shri/Smt. under suspension pending enquiry into given charge or charges.

Now, therefore, in exercise of the powers conferred by sub-rule (1) of Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969,) Governor/ President) Place Shri.... under suspension in public interest until the conclusion of the disciplinary proceedings/termination of all proceedings relating to the criminal charge(s) or till further orders whichever is earlier.

It is further ordered that during the period this order remains in force the headquarters of Shri/Smt..... (name and designation of Government servant) shall be (name of the place) and the said Shri/Smt..... Shall leave the headquarters without obtaining the previous permission of the undersigned.

"If is further ordered that during the period of suspension, Shri/Smt..... (Name and designation of the Government Servant) shall be paid subsistence allowance equivalent to the leave salary on half pay leave. The D.A. and other compensatory allowances shall be paid along with subsistence allowance. The quantum of subsistence allowance will be

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reviewed and revised in terms of Rule-4 of AIS (D&A) Rules, 1969 after 3 months. Pending review, he shall continue to draw the subsistence allowance now sanctioned.

By order and in the name of the President/Governor.

Signature....

(Name & Designation)

(Authority competent to authenticate order in the name of
President/Governor)

6. Extension of Period of Suspension

"The order of suspension of Shri/Smt. has been reviewed and it has been decided that the said individual shall continue to be under suspension till The quantum of subsistence allowance payable in terms of Rule-4 of AIS (D&A) Rules, 1969 is also reviewed and it has been decided that the said individual be paid subsistence allowance along with D.A and other compulsory allowances at the enhanced rate with immediate effect. "

Signature....

(Name & Designation)

(Authority competent to authenticate order in the name of
President/Governor)

7. Performa for Extension of Period of Suspension

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S. No.	Name and Designation of the Officer under suspension	Date of Suspension	Date of appointment of Inquiry Officer	(a) Have Charges been framed, if so, date (b) Has it been served on the other officer, if so, when date (c) Has it been served on the other officer, if so, when date (d) Has the case in support of the charge been presented before Inquiry Officer, date (e) Has the Officer under suspension entered upon his defence. If so, the date	Reasons for asking for extension	Expected date of completion	Whether the official has been paid subsistence allowance	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS**8. Check List for Suspension of Government Employees****SUSPENSION**

- (i) Whether the order of suspension is in the format Prescribed under Rule-3 of AIS (D&A) Rules, 1969
Yes/No
- (ii) Whether the orders for payment of subsistence Allowance issued in accordance with Rule-4 of AIS (D&A), 1969
Yes/No
- (iii) Whether the order of suspension is reviewed by the Authorities empowered under Rule-3 of AIS (D&A) Rules, 1969
Yes/No
- (iv) While reviewing the order of suspension, whether the Quantum of payment of subsistence allowance is reviewed in terms of Rule 4 of AIS (D&A) Rules, 1969
Yes/No
- (v) Whether the employees under suspension furnished the certificate as prescribed under Rule-4 of AIS (D&A) Rules, 1969
Yes/No

9. Standard Form of Certificate to be Furnished by the Suspended Member of Service under Rule- 4(2) AIS (D&A) Rules,1969

1..... (Name of Government servant) having been placed under suspension by Order No..... Dt..... while holding the post ofdo hereby certify that I have not been employed in any business or trade.

Date:

Address:

Signature
(Name of the Government servant)

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS**10. Standard Form for revocation of Suspension**

DATED.....

Order

Whereas an order placing Shri..... (Name and Designation of the Government Servant) under suspension was made/was deemed to have been made byon.....

2. Now, therefore, (the authority which made or is deemed to have made the order of suspension or any authority to which that authority is subordinate) in exercise of the powers conferred by All India Services (Discipline and Appeal) Rules, 1969 hereby revoke the said order of suspension with immediate effect.

(By order and in the name of the President/Governor)

Signature

(Authority competent to authenticate order in the name of President/Governor)

Copy to: -

1. Shri.....
(Name and designation of suspended Officer)
2. Shri.....
(Name and designation of lending authority making orders of suspension)
3. Shri.....
(Name and designation of the authority making the order of suspension)

11. Check List of Procedural aspects in Conducting Disciplinary Proceedings**1. Institution of Disciplinary Proceedings:**

- I. If it is proposed to hold a detailed enquiry against any Government Servant to whom AIS (D&A) Rules, 1969 applies, the following points shall be kept in mind:
 - a) Whether specific charges are framed

Yes/No

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b) Whether explanation has been received from the Delinquent Officer within the time stipulated.

Yes/No

c) Whether the Delinquent Officer has asked for any further information/additional documents.

Yes/No

d) Whether it is decided to impose a Minor penalty.

Yes/No

e) Whether it is decided to impose a major penalty and to conduct detailed inquiry by appointing inquiry authority or through Commissioner of Enquiries/ entrust the Disciplinary case to a Board for detailed inquiry.

Yes/No

II. Whether Presenting Officer is appointed as per sub-rule 6(c) of Rule 8 of AIS (D&A) Rules, 1969

Yes/No

III. If more than two members of service are involved, whether common disciplinary proceedings are instituted as per Rule 13 of AIS (D&A) Rules, 1969

Yes/No

IV. Whether the Central Vigilance Commission has been consulted, if required.

Yes/No

V. Whether ex-parte enquiry was conducted

Yes/No

VI. Whether the time schedule, as per DOPT guidelines, has been followed to complete the inquiry

Yes/No

VII. Whether the Charge-Sheet could be delivered in person or leave Address.

Yes/No

VIII. Is the report of the Inquiry Authority as per sub-rule (24) of Rule 8 of AIS (D&A) Rules, 1969?

Yes/No

IX. Whether the report of the Inquiry Authority contains the following:

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- (i) An introductory para, indicating appointment of Inquiry Authority and the dates of hearing.
- (ii) Charges that were framed
- (iii) Brief statement of the case of disciplinary authority in respect of the charges inquired into
- (iv) Brief statement of facts and documents admitted
- (v) Brief statement of the explanation of the charged Member of the Service
- (vi) Assessment of evidence in respect of each point
- (vii) Finding on each charge
- (viii) whether the inquiry authority ensured that no recommendation was made about the quantum of punishment
- (X) Whether the Inquiry Authority sent the following along with the Inquiry Report
 - a) List of documents produced by the Presenting Officer
 - b) List of documents produced by the charged Member of Service
 - c) List of prosecution witnesses
 - d) List of defence witnesses
 - e) Deposition of witnesses in the order in which they were examined
 - f) Written statement of defence
 - g) Applications if any, filed during Inquiry, and orders passed thereon, as also orders passed on oral requests made during the inquiry.

Processing the Inquiry Report

- (i) Whether further action on the Inquiry Report is as per Rule 9 of the AIS (D&A) Rules, 1969
Yes/No
- (ii) Whether the Disciplinary Authority after going through the Inquiry Report agrees with the findings and if any error is noticed whether the point at which it is erred, is recorded and did the Disciplinary Authority ask the same Inquiry Officer to conduct further enquiry and report
Yes/No
- (iii) Whether the Disciplinary Authority exercised his mind in arriving at the findings on the charges and independently arrive at the nature and quantum of punishment
Yes/No
- (iv) Whether the Central Vigilance Commission is consulted as per the scheme of Vigilance Commission
Yes/No
- (v) Whether the procedure to refer the case to DOPT has been followed in case the Central Vigilance Commissioner's recommendations are not agreed to.

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Yes/No

- (vi) Whether the UPSC needs to be consulted and if so, whether it was consulted.

Yes/No

- (vii) Whether the final orders issued are as be with the recommendation of UPSC

Yes/No

- (viii) If not, whether the procedure in disagreement cases has been followed.

Yes/No

12. Standard Form for Charge-Sheet in a Major Penalty Proceedings

Memorandum

It is proposed to hold an enquiry against Shri..... (Name and designation) Department in accordance with the procedure laid down in Rule 8 of the AIS (D&A) Rules, 1969.

2. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). The statement of imputations of misconduct and misbehaviour in support of each Article of Charge is at Annexure-II. A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure - IV and V).

3. Shri..... (Name and designation) are directed to submit within 30 days of the receipt of this memorandum, a written statement of his/her defence.

4. Shri..... (Name and designation) is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He/ She should, therefore, specifically admit or deny each article of charge.

5. Shri (Name and designation) is further informed that if he/she does not submit his/her written statement of defence on or before the date specified in para-3 above, further action will be processed based on the material available.

6. Attention of Shri..... is invited to Rule 18 of AIS (Conduct) Rules, 1968 under which "*No Member of the Service shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government*". If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri..... is aware of such a

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representation and that it has been made at his instance and action will be taken against him for violation of Rule 18 of the said rules of 1968.

7. The receipt of this memorandum should be acknowledged by Shri/Smt./Ms.

By order and in the name of the President/Governor.

Signature

(Name & Designation)

(Authority competent to authenticate order in the name of President/Governor)

To

Shri (Name & Designation)

Annexure I

Articles of charge framed against Shri

(Name and Designation)

Article - I: -- That the said Shri..... (Name and Designation) while functioning as during the period

Basis of the Charge

Article - II: -- That during the aforesaid period and while functioning in the aforesaid office, the said Shri..... (Name and Designation)

Basis of the Charge:

Article - III: -- That during the aforesaid period and while functioning in the aforesaid Office, the said Shri..... (Name and Designation)

Basis of the Charge:

Example

Annexure I

Statement of Articles of Charge Against 'X', (Designation) Office, Delhi

"That Shri 'X', (Designation) on 2021 indulged in unruly behaviour including manhandling of Shri 'X' Assistant, Accounts Branch, in office premises during working hours which is unbecoming of a Member of Service thereby committed gross misconduct, in violation of Rule-3(1) the All India Service (Conduct) Rules, 1968.

Annexure II

List of documents by which the articles of charge framed against Shri..... (Name and Designation) are proposed to be sustained.

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List of witnesses by whom the articles of charge framed against Shri..... (Name and Designation) are proposed to be sustained.

13. Standard Form of Order Relating to Appointment of Inquiring Authority**Order**

Whereas an inquiry under Rule 8 of the AIS (D&A) Rules, 1969 is being held against Shri..... (Name and Designation of the Member of Service)

2. AND WHEREAS, it is considered that an Inquiring Authority should be appointed to inquire into the charges framed against the said Shri.....

3. NOW, THEREFORE, in exercise of the powers conferred by sub-rule (2) of Rule 8 of AIS (D&A) Rules, 1969, the disciplinary authority hereby appoints Shri..... (Name and Designation of the Inquiring Officer) as the Inquiring Authority to inquire into the charges framed against the said Shri.....

(By order and in the name of the President/Governor)

Signature
(Name & Designation)

(Authority competent to authenticate order in the name of President/Governor)

COPY TO:

- i. (Name and Designation of the Government Servant)
- ii. (Name and Designation of the Inquiry Authority)
- iii. (Name and Designation of the lending authority, where necessary) for information

14. Standard Form of Order Relating to Appointment of Presenting Officer**Order**

Whereas an inquiry under Rule 8 of AIS (D&A) Rules, 1969 is being held against Shri..... (Name and Designation of the charged officer).

2. AND WHEREAS, it is considered that a Presenting Officer should be appointed to present on behalf of the disciplinary authority the case in support of the articles of charge.

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3. NOW, THEREFORE, the disciplinary authority in exercise of the powers conferred by sub-rule (6)(c) of Rule 8 of the said rules, hereby appoints Shri..... (Name and Designation of the Presenting Officer) as the Presenting Officer.

(By order and in the name of the President/Governor)

Signature

(Authority competent to authenticate order in the name of President/Governor)

COPY TO:

1. The Presenting Officer
2. The Charged Officer
3. The Inquiry Authority

15. Standard Form of Memorandum of Charge for Minor Penalties

Memorandum

Shri..... (Designation) (Office in which working) is hereby informed that it is proposed to take action against him/ her under Rule 10 of the AIS (D&A) Rules, 1969. A statement of the imputation of misconduct or misbehaviour on which action is proposed to be taken is enclosed.

2. Shri/Smt. is hereby given an opportunity to make such representation as he/she may wish to make against the proposal.

3. If Shri/Smt. fails to submit his/her representation within ten days of the receipt of this Memorandum, it will be presumed that he/she has no representation to make, and orders will be liable to be passed against Shri/Smt. ex-parte.

4. The receipt of this Memorandum should be acknowledged by Shri/Smt.....

(By order and in the name of the President/Governor)

Signature

To

Shri/Smt.

16. Standard Form for Minor Penalty Proceedings

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DATED.....

Memorandum

In continuation of Memorandum No..... Dt..... issued under Rule 10 AIS (D&A) Rules, 1969, it is considered necessary to hold an inquiry against Shri..... under Rule 10 of the AIS (D&A) Rules, 1969. The substance of the imputation of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge and the imputation of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure-I). A list of documents by which and a list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed (Annexure-II and III).

2. Shri/Ms..... is directed to submit within 30 days of the receipt of this Memorandum a written statement of his defence.

3. Shri/Ms. is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He/she should, therefore, specifically admit or deny each article of charge.

4. Shri/Ms..... is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or otherwise fails or refuses to comply with the provisions of Rules 8 and 10 of the AIS (D&A) Rules, 1969 or the orders/directions issued in pursuance of the said rules the Inquiring Authority may hold the inquiry against him ex-parte.

5. Attention of Shri..... is invited to Rule 18 of the AIS (Conduct) Rules, 1968 which states that no Member of service shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri..... is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 18 of AIS (Conduct) Rules.

6. The receipt of this Memorandum should be acknowledged by Shri.....

(By order and in the name of the President/Governor)

(Signature)

To

Shri.....

Enclosures: - Annexures I, II and III.

17. Inquiry Report on the Departmental Inquiry

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Inquiry Held Against Shri/Smt

Submitted by

Inquiry Officer

Vide Letter No.....

Dated:

1. Under sub-rule (2) of Rule 8 of AIS (D&A) Rules, 1969, I was appointed by the (designation of the Disciplinary Authority who appointed the Inquiry Officer), as the Inquiring Authority to inquire into the charges framed against Shri..... Vide memo. No..... dated..... I have since completed the inquiry and on the basis of the documents and oral evidence adduced before me prepared by Inquiry Report as under:
2. Shri..... (Name & Designation) was appointed as Presenting Officer in terms of Rule 8 (6) (c) AIS (D&A) Rules, 1969 (in case a Presenting Officer is appointed).
3. Participation by the Charged Officer in the inquiry and Defence Assistants available to him/her
The Charged Officer participated in the inquiry from beginning to end. He was assisted by Shri..... of the O/o..... as Defence Assistant throughout the inquiry proceedings.
4. Articles of Charge and substance of Imputation of Misconduct or misbehaviour
The following (three) articles of charge had been framed against Shri.....
Article No. I
Article No. II
Article No. III
According to the statement of imputation of misconduct or misbehaviour
.....
.....
.....
.....
..... (Here the substance of imputation of misconduct or misbehaviour be given in brief). (List of exhibited documents as shown in Annexure- I and list of witnesses as shown in Annexure – II)
5. Case of the Defendant
(The case of the defendant including points made out by him in his defence evidence, his written statement of defence and in brief. These should be discussed charge wise highlighting the arguments based on which he has refuted the charges levelled against him.)
6. Analysis and Assessment of Evidence

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The Inquiry Officer has to give his own logical and reasoned analysis at assessment of evidence in respect of each charge separately.

7. Findings

On the basis of documentary and oral evidence adduced in the case before me and in views of the reasons given above, I hold that the following charge proved/not proved against Shri.....

Charge No.1

Charge No.2

Charge No.3

Charge No.4

8. Annexure-I containing list of

Executive documents and Annexure-II

Containing list of witnesses examined are enclosed.

Sd-.....

Inquiry Officer

18. Time Schedule for Conduct and Completion of Departmental Inquiries

a)	Fixing date of hearing, inspection of listed documents, submission of list of defence documents and nomination of a defence assistant (if not already nominated).	Within two weeks from the date of appointment of the Enquiry Officer
b)	Inspection of documents or submission of list of defence witnesses/ defence documents or examination of relevancy of documents or witnesses, procuring the additional documents and submission of Certificates, confirming inspection of additional documents by Accused Officer or Defence Assistant	2 Weeks
c)	Issue of summons to witnesses, fixing the date of regular hearing and arrangements for participation of witnesses in the regular hearing	2 Weeks
d)	Regular hearing on day-to-day basis	2 Weeks
e)	Submission of written briefs by Presenting Officer and Submission of written briefs by Accused Officer / Defence Assistant to Inquiry Officer	2 Weeks

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f)	Submission of Inquiry Report by the Inquiry Officer	2 Weeks
----	---	---------

19. Penalty Order on the Ground of Conviction by a Criminal Court

DATE.....

Order

Whereas Shri/Smt/Kumari (here enter the name, designation of the Govt. Servant) has been convicted in (Here enters the name of the convicting court, no and date) on a Criminal Charge under section or sections of (here enter the Numbers of section and the name of the code or the statute) and has been sentenced to..... (here enter the punishment imposed by the court).

And whereas, after careful consideration of the offence, conviction and sentence, it is considered that the conduct of the said Shri/Smt./Kumari..... (Here enter the name & designation of the Govt. servant) is such as to render his/her continuance in Public Service undesirable, in public interest.

The representation dated..... submitted by Shri..... was considered as below-

.....

Now, therefore, in exercise of the Powers conferred by Rule 6 read with rule 14(i) of AIS (D&A) Rules, 1969 the Govt., the undersigned who is the appointing Authority, hereby dismisses/ removes/compulsorily retires from service the said Shri/Smt./Kumari _____ (here enter the date of dismissal/ removal/compulsory retirement).

(By order and in the name of the President/Governor)

Signature

(Authority competent to authenticate order in the name of President/Governor)

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS**20. Specimen order of Dismissal (Impracticability Clause)****Order**

Whereas it has been found that during the disciplinary inquiry against Sh. 'X', many employees of the office of located at Delhi, have for some time past, been indulging in various acts of misconduct, indiscipline, intimidation and insubordination such as absenting from work, wilful neglect of the duties assigned to them and disobedience of lawful instructions and orders of the Official superiors in support of Shri 'X' (Designation)

And whereas the said employees are also regularly holding meetings and demonstrations unauthorised and in violation of specific orders, within the office premises and its precincts.

And whereas the said employees have reported to coercion intimidation, and incitement of other fellow employees which has a serious demoralizing effect on the members of the organization and whereas such conduct of the said employees is unbecoming of a Govt. servant and is in gross violation of the Service Conduct rules.

And whereas due to the practice of coercion, intimidation and such like threats and postures adopted by the said employees, the atmosphere is so tense and abnormal that no witness will cooperate with any proceedings in accordance with the provisions of AIS (D&A) Rules, 1969.

And whereas the President is satisfied that the circumstances are such that it is not reasonably practicable to hold a regular enquiry as contemplated by the AIS (D&A) Rules, 1969.

And whereas on a consideration of the facts and circumstances of the case, President is satisfied that the penalty of dismissal from services should be imposed on Shri 'X', (Designation) Now, therefore, in exercise of the Powers conferred under the Proviso(b) of Clause (2) of Article 311 of the Constitution read with Rule 14 (ii) of AIS (D&A) Rules, 1969. President hereby dismiss Shri 'X' from the (Designation) with effect from the forenoon of December 6th 2021.

(By order and in the name of the President/Governor)

Signature

(Authority competent to authenticate order in the name of President/Governor)

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21. Setting aside the order of the Penalty Imposed on the basis of Conviction and Continuance of Departmental Action**Order**

Whereas Shri/Smt/Kumari..... (Here enter the name and designation of the Government. employee) was dismissed/removed/ compulsory retired from service with effect from or on (Here enter the date of dismissal/ removal/compulsory retirement) the ground of conduct which lead to his conviction on (Criminal Charge, in this Office Proceedings..... (Here enter the No & date of Order in which the Penalty was Imposed).

OR

And whereas, in consequence of the acquittal of the aforesaid individual by the court (Here enters the name of the court, court order no and date), for want of evidence or on the benefit of doubt, the Govt., /President have decided to set aside the order of dismissal/removal/compulsory retirement (here enter the name of the penalty) imposed on Shri/Smt/Kumari..... (here enter the name and designation of the Govt. employee) in Order No.....(here enter the No & date of original order of penalty);

And whereas the Govt/President on a consideration of the circumstances of the case, have/has also decided that a departmental Inquiry should be held under rule 8 of AIS (D&A) Rules, 1969 against the said Shri/Smt/Kumari..... (here enter the name and designation of the employee) on the basis of the misconduct which had to the imposition of the Penalty of dismissal/ removal/compulsory retirement from service/here enter the name of the Penalty imposed);

Now, therefore, the Government/President hereby:

- (i) Set/sets aside the said order of dismissal/removal/compulsory retirement from service (here enter the penalty originally imposed);

Direct/directs that a departmental Inquiry should be held under rule 8 AIS (D&A) Rules, 1969 against Shri/Smt/Kumari..... (here enter the name & designation of the employee) on the misconduct which had to the imposition of the penalty of dismissal/removal/compulsory retirement from service (here enter the penalty originally impose and,

Direct/directs that the said Shri/Smt/Kumari..... (here enter the name and designation of the Govt. employee), shall, under sub-rule (6) of rule 3 of AIS (D&A) Rules, 1969 be deemed (here enter the date of dismissal/removal/compulsory retirement from service) and shall continue to remain under suspension until further orders.

It is further ordered that during the period of suspension, Shri/Smt/Kumari..... (here enter the name and designation of the Govt. employee) shall be paid subsistence allowance equivalent to the leave salary on half pay leave. The DA and other allowances at the rates admissible under Rule-4 shall also be paid. The quantum of subsistence allowance shall be reviewed and revised as

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per rule-4 of AIS (D&A) Rules, 1969, after 3 months. Pending review, he shall continue to draw the subsistence allowance now sanctioned

(By order and in the name of the President/Governor)

Signature

(Authority competent to authenticate order in the name of President/Governor)

22. Order setting aside the Previous order of Penalty after Honourable Acquittal by the Court

NO.....

DATE

Order

Whereas Shri/Smt/Kumari (Here enter the name and designation of the Govt. employee) was dismissed/removed/compulsorily retired from service with effect from (Here enter the date of dismissal/removal/compulsory retirement of the employee) on the ground of conduct which had led to his conviction on a criminal charge vide Order No & date in which the employee was originally dismissed/removed/compulsory retired from service).

And whereas the said conviction has been set aside by the court..... in its order No. (here enter the name of the court order No and date) and the said Shri/Smt/Kumari (here enter the name and designation of the Govt. employee) has been acquitted of the said criminal charge.

Now, therefore, the Government/President hereby set/sets aside the order of dismissal/removal/compulsory retirement from service (here enter the name of the Penalty) with immediate effect Orders of posting will be issued separately.

By order and in the name of the President/Governor.

Signature

(Name & Designation)

(Authority competent to authenticate order in the name of President/Governor.)

PART - 2

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

CHAPTER-1: OVERVIEW OF VIGILANCE AND DISCIPLINARY PROCEEDINGS

S · N o ·	Subject	Rule/ Instructions	Date	Page
1 ·	I. Provisions related to AIS in Constitution of India.	Article310 Article311 Article312		
U R L	https://legislative.gov.in/sites/default/files/COI...pdf			
	II. Service Rules for All India Service Officers	All India Services Act, 1951		
U R L	https://legislative.gov.in/sites/default/files/A1951-61_0.pdf			
	III. Discipline & Appeal Rules applicable on AIS Officers.	AIS (Discipline & Appeal) Rules, 1969.		
U R L	https://dopt.gov.in/sites/default/files/12.The%20All%20Inda%20Services%20%28Discipline%20and%20Appeal%29%20Rules%2C%201969%20%28Update%20up%20to%2015th%20March%2C%202008%29.pdf			

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

CHAPTER-2: PRELIMINARY INQUIRY/ INVESTIGATION

S No.	Subject	Rule/ Instructions	Date	Page No.
1.	CVC Instructions relating to Complaint handling & preliminary Inquiry.	CVC Manual Chapter-3,4 & 5	2021	
URL	https://cvc.gov.in/sites/default/files/ENGLISH-Vigilance%20Manual%202021-2_1.pdf			
2.	Machinery for handling complaints from "Whistle Blowers"	Resolution- No.371/12/2002-AVD-III	21 st April 2004 & 29 th April 2004	
URL	https://documents.doptcirculars.nic.in/D2/D02ser/371_12_2002-AVD-III-21042004.pdf			
3.	Procedure for handling Complaints against Secretaries to the Government of India.	O.M. No.104/100/2009-AVD.I	14 th January, 2010	
URL	https://documents.doptcirculars.nic.in/D2/D02ser/104_100_2009-AVD.I.pdf			
4.	Procedure for handling Complaints against Secretaries to the Government of India.	Corrigendum- No.104/100/2009-AVD.I	08 th March, 2010	
URL	https://documents.doptcirculars.nic.in/D2/D02ser/104_100_2009-AVD.I-1.pdf			
5.	Procedure for handling Complaints against Secretaries to the Government of India.	No.104/100/2009-AVD.I	04 th May 2011	
URL	https://documents.doptcirculars.nic.in/D2/D02ser/104_100_2009-AVD-1.pdf			
6.	Guidelines regarding handling of complaints in Ministries/Departments.	OM. No.104/76/2011-AVD.I	18 th October, 2013	
URL	https://documents.doptcirculars.nic.in/D2/D02ser/104_76_2011-AVD-I-18102013.pdf			

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

7.	Complaint handling policy of CVC.	CVC circular [004/VGL/020(pt.)]	1 st July, 2019	
URL	https://cvc.gov.in/sites/default/files/comp_policy_1_0.pdf			
8.	Central Vigilance Commission- cases of differences from/ non-acceptance of the advice of- Procedure for consultation with the DOPT & A.R.	No. 118/2/78-AVD(I)	28 th September 1978	
URL	https://documents.doptcirculares.nic.in/D2/D02ser/118_2_78-AVD-I-28091978.pdf			
9.	Amended Rules of the All-India Services (Discipline & appeal) Rules, 1969	No. 5432 GI/2015	21 st December 2015	
URL	https://documents.doptcirculares.nic.in/D2/D02ser/11018_01_2013-AIS-III-25052016.pdf			

CHAPTER-3: SUSPENSION

S N o	Subject	Rule/ Instructions	Date	Page Number
1	Period of suspension to be treated as duty if only a minor penalty is imposed after conclusion of the disciplinary proceedings- Recommendations of the committee of the Committee of the National Council (JCM)	OM No. 11012/15/85-Estt(A)	03 rd December, 1985	
U R L	https://documents.doptcirculares.nic.in/D2/D02est/11012_15_85-Estt.A-03121985.pdf			

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

2	Procedure to be followed for suspension of all India Service officers posted in Ministries/ Departments/ State Governments under AIS (D&A) Rules,1969- Regarding.	No. 11018/01/2013-AIS-III	25 th May 2016	
U R L	https://documents.doptcirculars.nic.in/D2/D02ser/11018_01_2013-AIS-III-25052016.pdf			
3	Competent Authority to suspend AIS Officers and other provisions.	Rule-3, AIS(D&A), Rules,1969		
U R L	https://dopt.gov.in/sites/default/files/12.The%20All%20Inida%20Services%20%28D%20Discipline%20and%20Appeal%29%20Rules%2C%201969%20%28Updated%20up%20to%2015th%20March%2C%202008%29.pdf			

CHAPTER-4: CHARGE SHEET

S No.	Subject	Rule/ Instructions	Date	Page Number
1	Provisions related to charge sheet against AIS Officers.	AIS (D&A) Rules,1969 Rule-7,8,9,10		
U R L	https://dopt.gov.in/sites/default/files/12.The%20All%20Inida%20Services%20%28D%20Discipline%20and%20Appeal%29%20Rules%2C%201969%20%28Updated%20up%20to%2015th%20March%2C%202008%29.pdf			

CHAPTER-5: INQUIRY

S. No.	Subject	Rule/ Instructions	Date	Page Number

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

1.	Procedure for empanelment of retired officers as the Inquiry Officers for conducting Departmental Inquiry-reg.	No.142/40/2015-AVD.I	15 th September, 2017	
URL	https://documents.doptcirculars.nic.in/D2/D02ser/142_40_2015-AVD-I-15092017.pdf			

CHAPTER-6: SPECIAL CASES OR CIRCUMSTANCES

S. No.	Subject	Rule/ Instructions	Date	Page Number
1.	Procedure for intimation of disciplinary proceedings against the officers of All India Services under the Government of India and organisations under the Government of India.	No. 11018/3/94-AIS(III) of Ministry of Personnel, PG.& D/o Pension D/o Personnel & Trg.	9 th June 1995	
URL	https://documents.doptcirculars.nic.in/D2/D02ser/procedure.pdf			
2.	Simultaneous action of prosecution and initiation of departmental proceedings.	No. 11012/6/2007 Estt (A-III)	21 st July 2016	
URL	https://documents.doptcirculars.nic.in/D2/D02est/11012_6_2007-Estt.A-III-21072016.pdf			

CHAPTER-7: SEXUAL HARASSMENT CASES

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

S. No.	Subject	Rule/ Instructions	Date	Page Number
1.	The All-India Services (Prevention of Sexual Harassment) Regulations, 1998	Notification No. 11017/30/97- AIS(III)	24 th July 1998	
URL	https://dopt.gov.in/sites/default/files/Revised AIS Rule Vol I Rule 11.pdf			

CHAPTER-8: ACTION ON INQUIRY OFFICER'S REPORT

S. N o.	Subject	Rule/ Instructions	Date	Page Number
1.	Consultation with Union Public Service Commission (UPSC)- Procedure to be followed while disagreeing with the advice of the Commission.	No. 39023/02/2006- Estt (B)	5 th December 2006	
U R L	https://documents.doptcirculars.nic.in/D2/D02est/39023_02_2006-Estt.B-05122006.pdf			
2.	Communicating tentative reasons for disagreement under Rule 9(2) of AIS (D&A) Rules, 1969.	No. 11018/05/2012- AIS-III	23 rd August 2012	
U R L	https://documents.doptcirculars.nic.in/D2/D02ser/11018_05_2012_AIS.pdf			
3.	Procedure for dealing with cases of disagreement between Disciplinary authority and CVC	No.372/3/2017- AVD.III	1 st March, 2017	

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

U R L	https://documents.doptcirculars.nic.in/D2/D02ser/372_3_2017-AVD-III-01032017.pdf			
4.	Procedure for consultation with the Union Public Service Commission -	No. 390 11/08/2016-Estt(B)	28 th December, 2018	
U R L	https://documents.doptcirculars.nic.in/D2/D02est/Proforma%20Checklist%20for%20forwarding%20cases%20to%20UPSCVc6BD.PDF			

CHAPTER-9: IMPORTANT ASPECTS OF PENALTIES AND AUTHORITIES COMPETENT TO IMPOSE

S. No.	Subject	Rule/ Instructions	Date	Page Number
1.	Guidelines for Expeditious disposal of Disciplinary Proceedings	D.O. Letter No. 134/2/83-AVD.I	2 nd April 1985	
URL	https://documents.doptcirculars.nic.in/D2/D02ser/expeditious.pdf			
2.	Guidelines regarding adherence to timelines for Departmental Proceedings.	Amendments to All India Service (Discipline & Appeal) Rules, 1969 No.106/7/2015-AVD.I	15 th March 2017	
URL	https://documents.doptcirculars.nic.in/D2/D02ser/106_7_2015-AVD-I-15032017.pdf			
3.	Obligation of the sanctioning authority as per SC Judgement of CBI vs. Ashok Kumar Agarwal	No.142/15/2015-AVD.I	26 th March 2015	
URL	https://documents.doptcirculars.nic.in/D2/D02ser/142_15_2015-AVD.I-C-27032015.pdf			

CHAPTER-10: PENALTIES AND THE AUTHORITIES COMPETENT TO IMPOSE

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

S. No.	Subject	Rule/ Instructions	Date	Page Number
1.	Permission under Rule6 (1)(b)(i) of All India Services (Death cum-Retirement Benefits) Rules, 1958- Procedural requirements.	No. 106/17/2007-AVD.I	11 th September, 2007	
U R L	https://documents.doptcirculars.nic.in/D2/D02ser/106_17_2007-AVD.I.pdf			
2.	AIS (Discipline & Appeal) rules, 1969- Procedure regarding imposition of penalty in the event of a death of the accused member of Service-clarification regarding	No. 11018/02/2008-AIS-III	24 th June 2008	152
U R L	https://documents.doptcirculars.nic.in/D2/D02ser/No.11018_02_2008-AIS-III.pdf			
3.	Circulation of Revised checklist for forwarding the disciplinary proceedings proposals/ cases to Department of Personnel & training against IAS officers under Single Window System prescribed vide OM No. 142/16/2013-AVD-I dated 10 th February 2014- reg.	No. 142/1/2019-AVD (IB)	5 th August 2020	

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

U R L	https://dtf.in/wp-content/files/DoPT_Letter_dated_05.08.2020-Circulation_of_Check-List_for_forwarding_disciplinary_proceedings_proposalcases_to_DoPT_against_IAS_Officer_under_Singh_Window_System_under_OM_dated_10.02.2014.pdf
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CHAPTER 11: FINANCIAL EFFECTS OF PENALTIES

S. No.	Subject	Rule/ Instructions	Date	Page Number
1.	Regulation of pay on imposition of a penalty under CCS (CCA) Rules, 1965	No. 11012/15/2016-Estt A-III AIS (Pay) Rules 2016	18 th June 2019	
U R L	https://dopt.gov.in/sites/default/files/OM_dated_18_06_2019.pdf			
2.	Rules 5(1) of AIS (DCRB) Rules, 1958: Removal, dismissal or resignation from service	Vide Notification No. 24012/10/2010-AIS(II)(A)	28 th July 2011	
U R L	https://documents.doptcirculares.nic.in/D2/D02ser/24012_10_2010-AIS-II-28072011.pdf			
3.	Guidelines on treatment of effect of penalties on promotion- Role of Departmental Promotion Committee	No.22011/04/2007 -Esst. (D)	28 th April 2014	
U R L	https://documents.doptcirculares.nic.in/D2/D02est/22011_4_2007-Estt.D-28042014.pdf			
4.	Guidelines on treatment of effect of penalties on promotion- Role of Departmental Promotion Committee	No.22011/04/2007 -Ess. (D)	21 st November , 2016	
U R L	https://documents.doptcirculares.nic.in/D2/D02est/22011_4_2007-Estt.D-21112016.pdf			

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

5.	Withdrawal/withholding/recovery of pension/gratuity in the case of minor penalty proceedings.	No.110/9/2003-AVD-1	13 th April, 2009	
U R L	https://documents.doptcirculars.nic.in/D2/D02ser/110_9_2003-AVD-1.pdf			

CHAPTER-12: APPEAL, REVISION REVIEW & MEMORIALS

S. No.	Subject	Rule/ Instructions.	Date	Page Number
1.	Provisions related to Appeal, Revision, Review & Memorial	AIS (D&A) Rules, 1969 Rule- 5, 16, 17, 18, 19, 20, 21, 22, 23, 24, 24A, 25, 26		
U R L	https://dopt.gov.in/sites/default/files/12.The%20All%20India%20Services%20%28Discipline%20and%20Appeal%29%20Rules%2C%201969%20%28Updated%20up%20to%2015th%20March%2C%202008%29.pdf			

CHAPTER-13: SANCTION FOR PROSECUTION

S. No.	Subject	Rule/ Instructions.	Date	Page Number
1.	Provisions related to sanction of prosecution in Prevention of Corruption Act.	Section-19 PC Act.		
U R L	https://www.indiacode.nic.in/bitstream/123456789/15302/1/pc_act_1988.pdf			
2.	Provisions related to sanction of prosecution in Cr. PC Act.	Section-197 CrPC		
	https://legislative.gov.in/sites/default/files/A1974-02.pdf			

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

3..	Guidelines for Dealings with cases of Sanction for Prosecution	OM No.134/2/85-AVD-I	15/17 October 1986	
U R L	https://documents.doptcirculars.nic.in/D2/D02ser/AVD_III_06_11_2006.pdf			
4	Guidelines to be followed by the authorities competent to accord sanction for prosecution u/s. 19 of the PC Act.	CVC Circular No. 005/VGL/11	12 th May, 2005	
U R L	https://cvc.gov.in/sites/default/files/005vgl11.pdf			
5.	Guidelines for checking delay in grant of sanction of prosecution	No. 399/33/2006-AVD-III	6 th November 2006	
U R L	https://documents.doptcirculars.nic.in/D2/D02ser/AVD_III_06_11_2006.pdf			
5. 1	Guidelines for checking delay in grant of sanction of prosecution	No. 399/2006 –AVD-III	20 th December 2006	
U R L	https://documents.doptcirculars.nic.in/D2/D02ser/AVD_III_20_12_2006.pdf			
5. 2	Guidelines for checking delay in grant of sanction of prosecution	CVC Circular No. 33/09/10	28 th September 2010	
U R L	https://cvc.gov.in/sites/default/files/010crd003_04102010.pdf			
5. 3	Guidelines for checking delay in	OM No. 118/2/2011	31 st January 2012	

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

	grant of sanction of prosecution			
U R L	https://cvc.gov.in/sites/default/files/vm21ch6/vm17ch6/50.%20DoPT%20OM%20No.%20118_2_2011-AVD-III-dated%2031.01.2012.pdf			
6	Sanction for prosecution under Section- 19(1) of the P.C Act	No. 107/13/2007-AVD.I	27 th June 2008	
U R L	https://documents.doptcirculares.nic.in/D2/D02ser/107_13_2007-AVD.I.pdf			
7.	Withdrawal of cases from prosecution under Section 321 of Cr.PC., 1973-reg.	No.333/9/2009- AVD-II	23 rd October 2009	
U R L	https://documents.doptcirculares.nic.in/D2/D02ser/333_9_2009-AVD-II.pdf			
8.	Guidelines to be followed by the administrative authorities competent to accord sanction for prosecution u/s. 19 of the PC Act -1988- Hon'ble Supreme Court Judgement in Criminal Appeal No. 1838 of 2013- reg.	No. 005/VGL/11	25 th May, 2015	
U R L	https://cvc.gov.in/sites/default/files/gl25052015.pdf			
9.	Introduction of Single Window System in Department of Personnel & Training for receiving proposals for sanction for prosecution under	No.142/4/2012-AVD, I	28 th July, 2014	

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

	the Prevention of Corruption Act, 1988			
U R L	https://documents.doptcirculars.nic.in/D2/D02ser/SWS-28072014.pdf			
10	Introduction of Single Window System in Department of Personnel & Training for receiving proposals for sanction for prosecution under the Prevention of Corruption Act, 1988- comments of the administrative authority to CBI - regarding	No.142/4/2012-AVD, I	28 th July, 2014	
U R L	https://documents.doptcirculars.nic.in/D2/D02ser/SWS-28072014-A.pdf			

CHAPTER-14: Compulsory Retirement other than Penalties/ Premature Retirement in Public Interest

S. No.	Subject	Rule/ Instructions.	Date	Page No.
1.	Guidelines for Intensive review of records.	All India Services (Death-Cum-Retirements Benefits) Rules, 1958- Rules 16(3) No. 25013/02/2005-AIS-II	28 th June, 2012	
U R L	https://documents.doptcirculars.nic.in/D2/D02ser/25013_02_2005-AIS-II-28062012.pdf			

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

CHAPTER-15: IMPORTANT CASE LAWS

S. N o.	Case Name	Hyperlink
1	Chandrama Tewari vs. Union of India 1987, Supp. SCC 518; AIR1988, SC 117	Chandrama Tewari vs. Union of India
2	State of Rajasthan vs B.K. Meena; Supp. SCC 518; AIR 1996, SCC (L&S) 1455	State of Rajasthan vs B.K. Meena
3	State of U.P vs Mohd. Sharif, 1982 (2) SLR 265	State of U.P vs Mohd. Sharif
4	A.R.S. Chaudhary vs Union of India, AIR 1956, Cal. (662)	A.R.S. Chaudhary vs Union of India
5	Mohd. Quamaruddin vs state of A.P (1994) 5 SCC 118	Mohd. Quamaruddin vs state of A.P
6	Kuldeepsingh vs Commisisoner of Police and others 1999(2) SCC 10: 1999(86) AIR 677	Kuldeepsingh vs Commisisoner of Police and others
7	Kusheshwar Dubey vs Bharat Cooking coal ltd (1988) 4 SCC 319: AIR 1988 SC 2118	Kusheshwar Dubey vs Bharat Cooking coal ltd
8	Union of India Vs. B V Gopinath [(2014) 1 SCC 351] Judgment dated 06.09.2013 in Civil Appeal No. 6348 of 2011	Union of India Vs. B V Gopinath
9	MV Bijlani Vs. Union of India [(2006) 5 SCC 88] Judgment dated 05.04.2006 in appeal (civil) 8267 of 2004	MV Bijlani Vs. Union of India
10	Government of A.P. And Ors vs V. Appala Swamy [(2007) 14 SCC 49] Judgment dated 25 January 2007 in appeal (civil) 393 of 2007	Government of A.P. And Ors vs V. Appala Swamy
11	P.D. Agrawal Vs. State Bank of India and Others 2006(8) SCC 776	P.D. Agrawal Vs. State Bank of India and Others
12	Anil Gilurker Vs. Bilaspur Raipur Kshetria Gramin Bank & Anr. (2011) 14 SCC 379 Judgment dated 15 Sep 2011 in Civil Appeal No. 7864-7865 of 2011	Anil Gilurker Vs. Bilaspur Raipur Kshetria Gramin Bank & Anr.
13	Union of India &Ors. v. Gyan Chand Chattar [(2009) 12 4 SCC 78], Judgment dated 28 May 2009 in Civil Appeal No. 4174 of 2003	Union of India &Ors. v. Gyan Chand Chattar

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

14	State Bank of Patiala & Ors. Vs. S. K. Sharma [(1996) 3 SCC 364]	State Bank of Patiala & Ors. Vs. S. K. Sharma
15	Deputy General Manager Vs. Ajai Kumar Shrivastava Judgment dated 05.01.2021 in SLP(C) No(s). 3206732068 of 2018	Deputy General Manager Vs. Ajai Kumar Shrivastava
16	Om Prakash vs Delhi Society for Prevention of Cruelty Of Animals & Ors. Delhi High Court Judgement dated 21 September 2011 in LPA No. 287/2011	Om Prakash vs Delhi Society for Prevention of Cruelty Of Animals & Ors
17	Punjab National Bank Vs. Kunj Behari Misra (1998) 7 SCC 84	Punjab National Bank Vs. Kunj Behari Misra
18	Delhi High Court in Judgment dated 26.03.2021 in WP (C) No. 7401/2017 [Sunil Kumar Nagpal Vs. Central Bank of India & Ors] Relying on Punjab National Bank Vs. Kunj Behari Misra (1998) 7 SCC 84	Sunil Kumar Nagpal Vs. Central Bank of India & Ors
19	Delhi High Court in Judgment dated 26.03.2021 in WP (C) No. 7401/2017 [Sunil Kumar Nagpal Vs. Central Bank of India & Ors] Relying on Deputy General Manager v. Ajai Kumar Shrivastava [(2021) 2 SCC 212]	Sunil Kumar Nagpal Vs. Central Bank of India & Ors
20	State Bank of India and Ors. Vs. Narendra Kumar Pandey [2013 (2) SCC 740.] Judgment dated 14.01.2013 in CIVIL APPEAL NO. 263 OF 2013	State Bank of India and Ors. Vs. Narendra Kumar Pandey
21	Union of India Vs. K.K. Dhawan 1993 SCC (2)56; JT 1993 (1)236 Judgment dated 27 .01.1993	Union of India Vs. K.K. Dhawan
22	Anant R. Kulkarni vs Y.P. Education Society & Ors. [(2013) 6 SCC 515, Judgment dated 26.04.2013 in Civil Appeal No. 3935 of 2013	Anant R Kulkarni vs Y.P. Education Society & Ors.

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

23	Chairman LIC of India &Ors Vs A. Masilamani [(2013) 6 SCC 530] Judgment dated 23.11.2012 in Civil Appeal No. 8263 Of 2012	Chairman LIC of India &Ors Vs A. Masilamani
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CHAPTER-16: SAMPLE FORMATS.

[Available in part-1 Chapter-16]

Note: Only those circulars are retyped and attached below with this Compendium which are very old and photocopy available on the website is also hard to read.

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

No.11012/15/85-Estt (A)
Government of India/Bharat Sarkar
Ministry of Personnel, Training & Administrative Reforms
And Public Grievance & Pension
Department of Personnel & Training.

New Delhi, the 3rd December, 1985

OFFICE MEMORANDUM

Subject: - Period of suspension to be treated as duty if only a minor penalty is imposed after conclusion of the disciplinary proceedings- Recommendations of the committee of the Committee of the National Council (JCM).

The undersigned is directed to invite attention to this Department OM No. 43/56/64-AVD dated-22.10.64 containing the guidelines for placing Government servants under suspension and to say that these instructions lay down, inter-alia, that Government servant could be placed under suspension if a prima facie case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement.

These instructions thus make it clear that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor Penalty. The Staff Side of Committee of the National Council set up to review the CCS (CCA) Rules, 1965 had suggested that in cases where a government servant, against whom an inquiry has been held for the imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances paid for suspension period. Government have accepted this suggestion of the staff side. Accordingly, where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be wholly unjustified in terms of FR (54-B) and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under FR 54-B.

2. Ministry of agriculture etc. are requested to bring the contents of para 1 above to the notice of all authorities concerned under their control.

3. These orders will become effective from the date of issue.
Past cases already decided need not be reopened.

4. Hindi version will follow.

(A. JAYARAMAN)
Director.

To
All Ministries/ departments (with usual number of spare copies2/-
Copy with usual number of spare copies.

1. Union Public Service Commission, New Delhi.

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COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

2. Central Vigilance Commission, New Delhi
3. Office of the C&AG, NEW DELHI.
4. All Union Territory Administration,
5. JCA Section, Dept. of Personnel and Training.
6. All member of Staff Side, National council (JCM)
7. Secretary, staff side, National council (JCM) 13-C Feroz Shah Road, New Delhi.
8. All attached/ subordinate offices of the ministry of Home Affairs and the ministry of Personnel and training, Administrative Reforms and Public Grievances & Pensions.

(A. JAYARAMAN)
Director

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

No. 39023/02/2006-Esst (B)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

North Block, New Delhi, 05th December, 2006

OFFICE MEMORANDUM

**Subject: Consultation with Union Public Service Commission (UPSC)-
 Procedure to be followed while disagreeing with the advice of the commission.**

1.	18/4/49-Esst (B) Dt. 05.02.49	The undersigned is directed to say that this department's OM. No. 39028/26/93-Esst (B) 10.11.95, recirculated vide OM No 39028/26/93-Esst. (B) Dated 19.02.97 prescribes the procedure to be followed for not accepting the advice of the UPSC tendered in response to a reference made to it in appointment and disciplinary case.
2.	18/18/48- Estt (B) dt. 20.08.49	
3.	11/02/50-RE dt. 27.11.50	
4.	18/42/50- Estt (B) Dt. 09.12.70	
5.	18/6/70- Estt (B) Dt.09.12.70	The procedure to be followed has been reviewed and it has been decided to amend the procedure laid down in the aforesaid instructions as given below.
6.		
7.		
8.		

(I) APPOINTMENT CASES (DIRECT RECRUITMENT/ DEPUTATION/ PROMOTION ETC.)

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS**(a) Cases referred to ACC by Ministries/ Departments/ concerned Divisions of Department of Personnel & Training, where ACC approval is required for appointment.**

Where the ACC has disagreed with the advice of UPSC or of the Department Promotion Committee/ Selection Committee in which Chairman/ Member of the UPSC is the chairman of such Committee, the decision of the ACC should be intimated by the Ministry Concerned to the UPSC by endorsing a copy of the order issued in pursuance of the ACC decision.

(b) Cases where approval of ACC is not required appointment.

Where the appointing Authority proposes to discharge with the advice of UPSC for any valid reason, cases (s) should be referred to the ACC, along with a self-contained note, through EO's office in Department of Personnel & Training, for decision. In respect of cases covered under (a) and (b), where the final decision by ACC involves disagreement with the advice of UPSC, reasons for non-acceptance of the Commission's advice will also be intimated by the Ministry/ Department /concerned Division of Department of Personnel and Training to the UPSC while communicating the decision of the ACC, unless it has been decided to withhold the reasons for disagreement in public interest.

(II) DISCIPLINARY AND OTHER CASES**(a) General Procedure for Ministries/ Departments (other than Ministry of Personnel, Public Grievances and pensions).**

Where it is proposed by the Disciplinary Authority (in disciplinary cases/ Competent Authority to disagree with the advice to UPSC, a reference shall be made to the Department of Personnel and Training (Establishment Division) in the relevant file indicating reasons for the proposed disagreement and its advice taken into consideration before a final order is passed. In respect of Disciplinary cases relating to Group 'A' Officers, provisions of entry 39 (ii) of the Transaction of Business Rules, 1961 requiring approval of the Prime Minister in certain cases, shall also be kept in view

If the final decision involves disagreement with the advice of UPSC, reasons for such disagreement will also be intimated by the Ministry/ Department concerned to the UPSC while communicating the decision to the UPSC.

(III) Procedure relating to cases involving services/cadres/posts under the control of the ministry of personnel, Public Grievances and pensions.

If in the opinion of the Secretary of the Ministry of Personnel, Public Grievances and Pensions, there is a case for disagreement with the advice of UPSC in a disciplinary or other matter (other than appointment cases) in respect of services/ posts for which it is the controlling authority, a proposal will be placed before the Committee of Secretaries for its consideration. Thereafter, the case will be submitted to the Minister in charge/ Prime Minister, as the case may be, along with the opinion of the Committee of Secretaries. In cases of appointment, however, the matter will be placed before the Minister-in-charge/ Prime Minister directly and if the decision of

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

Minister involves non- acceptance of the advice of the Commission, the case would be referred to the ACC for a final decision.

The decision of ACC in appointment cases and of Minister-in charge/Prime Minister in disciplinary or other cases, will be implemented by issuance of a formal order. If the final decision involves disagreement with the advice of the Commission, the decision will be conveyed to the UPSC along with the reasons, wherever applicable, for no-acceptance of the Commission's advice, unless in a case referred to the ACC, the reasons have been withheld in public interest.

Note: - In all the cases, other than cases covered under 1 (a), where the initial opinion of the appointing Authority/ Disciplinary Authority/ competent Authority/ Secretary, Department of Personnel and Training, as the case may be, is based on a new fact/evidence having a bearing on the case which became available after the recommendation of the commission was received or which became available earlier but the commission could not be informed of the same before it made its recommendations, the case will be referred back to the commission for reconsideration of its recommendation/ advice along with all relevant details. If it is still proposed to depart from the recommendation/advice of the commission given on reconsideration of the matter, the procedure laid down in the preceding paras may be followed.

(C.A. Subramanian)
Director

To

The Secretaries, All Ministries/ Departments Government of India

Copy forwarded to: -

1. The President's Secretariat, Rashtrapati Bhavan, New Delhi.
2. Vice-President's Secretariat, New Delhi.
3. The Prime Minister's Office, South Block, New Delhi.
4. The Cabinet Secretariat, Rashtrapati Bhavan, New Delhi.
5. The Secretary, Central Vigilance Commission, INA, New Delhi.
6. The Secretary, Union Public Service Commission, New Delhi.
7. The Lok- Sabha Secretariat, New Delhi.
8. The Rajya Sabha Secretariat, New Delhi.
9. The Comptroller and Auditor General of India, New Delhi
10. All attached offices under Ministry of personnel, public Grievances and Pensions.
11. All Officers and Sections in the Ministry of Personnel, Public Grievances and Pensions.
12. Website Section, NIC, Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi.
13. 250 spare copies.

(B.M. Sehgal)
Under Secretary to the Government of India

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

CONFIDENTIAL

**No. 118/2/78-AVD(I)
Government of India
Department of Personnel & Administrative Reforms
(Ministry of Home Affairs)**

New Delhi, dated the 28.09.78

OFFICE MEMORANDUM

Subject: - Central Vigilance Commission- Cases of differences from/ non-acceptance of the advice of procedure for consultation with the Department of Personnel & A.R.

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The Central Vigilance Commission is Consulted at various stages of Departmental proceedings against gazetted officers of the Central Government and officers of the Public Sector Undertakings Drawing a basic pay of Rs. 1000/- or more, as well as before a final decision is taken on complaints against such officers. A second reference to the C.V.C is also required to be made for reconsideration of its advice in cases in which the disciplinary proposes to discharge with its advice, vide CVC's letter No. 1/14/70-R, dated the 20th July, concerned disciplinary authority.

2. With a view to bringing about greater uniformity in examining on behalf of the President the advice tendered by CVC and taking decisions thereon, it has been decided that this Department should be consulted before the Ministries /Departments finally decide to differ from/ not to accept any recommendation of the Central Vigilance Commission in those cases which relates to Gazetted Officers for whom the appointing authority is the President. Such a reference to this department in those cases should be made at the following stages: -

(i) where the Central Vigilance Commission advises action on a complaint or an investigation report, or further investigation into any allegation against an officer, but the concerned administrative Ministry/Department Proposes not to take any further action on the complaint/investigation report, and

(ii) the concerned administrative Ministry/ Department proposes not to accept the Second stage advice of the CVC on (a) a report of an Inquiring Authority or (b) the explanation submitted by an officer in reply to a charge- sheet in minor penalty proceedings.

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3. Cases in which the Heads of the Departments or other authorities like Commissioner of Income Tax, Collector of Central Excise, Chief Engineer etc. are the disciplinary authorities, need not be referred to this Department.

4. Disciplinary cases pertaining to officers of the Public Sector Undertaking in which decisions are to be taken by the Board of Directors, should also not be referred to this Department. However, in such cases, copies of final order passed by the concerned Public Sector Undertakings, together with a separate note giving reasons

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

for differing from, or non-acceptance of, any recommendation of the Central Vigilance Commission should be sent to this Department for Information as soon as possible.

(N.R. Subramanyan)

Deputy Secretary to the Government of India.

All the Ministries/Departments of the
Government of India,
(Chief Vigilance Officers by name.)

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS**Department of Personnel & Training O.M. No. 134/2/85-AVD-I dated 15/17-10-1986.**

The work relating to accord of Central Government's sanction for the prosecution of any person in a case investigated by the Central Bureau of Investigation which was centralized in the Department of Personnel & Training, has since been decentralized and vested in the Ministry/Department concerned vide Cabinet Secretariat's Notification No. CD.828/86, dated the 30th September, 1986 (annexed).

2.1 The Central Bureau of Investigation recommend prosecution of persons only in those cases in which find sufficient justification for the same as a result of the investigation conducted by them. There are adequate internal controls within the CBI to ensure that a recommendation to prosecute is Taken only after a very careful examination of all the facts and circumstances of the case. Hence, any decision not to accord sanction for prosecution in such cases should, therefore, be for very valid reasons.

2.2 The following guidelines may be kept in view while dealing with cases of sanction of prosecution.

(i) In cases in which the sanction for prosecution is required to be accorded in the name of the President, the Central Vigilance Commission will advise the Ministry/Department concerned and it would be for that Ministry/Department to consider the advice of the CVC and to take a decision as to whether or not the prosecution should be sanctioned;

(ii) In cases in which an authority other than the President is competent to sanction prosecution, and that authority does not propose to accord such sanction, it is required to report the case to the Central Vigilance Commission and take further action after considering the Central Vigilance Commission's advice, vide para 2(v.i) (b) of the Government Resolution by which the Central Vigilance Commission was set up and the Central Vigilance Commission's letter No. 9/1/64.DP, dated 13th April, 1984;

(iii) In a case falling under (i) above, if the Central Vigilance Commission advises grant of sanction for prosecution but the Ministry/Department concerned proposes not to accept such advice, the case should be referred to this Department for a final decision;

(iv) In a case falling under (ii) above, if the Central Bureau of Investigation has sought sanction for prosecution and Central Vigilance Commission has recommended grant of sanction and yet, the competent authority proposes not to grant sanction, the case should be referred to this Department for a final decision;

(v) Where two or more Government servants belonging to different

Ministries/Departments, or under the control of different cadre controlling authorities are involved, the CBI will seek sanction from the respective Ministries/Departments or the respective competent authorities in accordance with the procedure laid down in the above paragraphs. Where sanction is granted in the case of one of the Govt. servants but sanction is refused in the case of the other or others, the CBI will refer the case to this Department for resolution of the conflict, if any, and for a final decision.

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

4-1 CVC/ND/87

**ANNEXURE TO DEPARTMENT OF PERSONNEL & TRAINING O.M. NO.
134/2/85-AVD-I DATED 15/17-1086.****RASHTRAPATHI BHAVAN NEW DELHI**

Dep. No. CD-828/86

New Delhi, the 30th September, 1986**NOTIFICATION**

In exercise of the powers conferred by clause (3) of article 77 of the Constitution, the President hereby makes the following rules further to amend the Government of India (Allocation of Business) Rules, 1961 namely: -

1. (1) These rules may be called the Government of India Allocation of Business) (One hundred and eighty seventh Amendment) Rules, 1986.
(2) They shall come into force at once.
2. In the Government of India (Allocation of Business) Rules, 1961-
(I) In rule 3-
(i) In sub-rule (1), for the word, brackets and figure, "sub-rule (2)", the words, brackets and figures "sub-rules (2) (3) and (4)" shall be substituted;
(ii) After sub-rule (2), the following sub-rules shall be inserted, namely: -
“(3) Where sanction for the prosecution of any person for any offence is required to be accorded-
(a) If he is a Government servant, by the Department which is the Cadre Controlling authority for the service of which he is a member, and in any other case, by the Department in which he was working at the time of commission of the alleged offence;
(b) If he is a public servant other than a Government servant, appointed by the Central Government, by the Department administratively concerned with the organization in which he was working at the time of commission of the alleged offence, and
(c) In any other case by the Department which administers the Act under which the alleged offence in committed:

Provided that where, for, offences alleged to have been committed, sanction is required under more than one Act, it shall be competent for the Department which administers any of such Acts to accord sanction under all such Acts.

(4) Notwithstanding anything contained in sub-rule (3), the President may, by general or special order, direct that in any case or class of cases the sanction shall be accorded by the Department of Personnel and Training”.

- (II) In the second schedule-

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

(i) Under the heading “MINISTRY OF FOOD AND CIVIL SUPPLIES (KHADYA AUR NAGRIK POORTI MANTRALAYA)” under the sub-reading “A DEPARTMENT OF FOOD (KHADYA VIBHAG)”, for entry 1, the following shall be substituted, namely: -

“1. Purchase of food stuffs for civil requirements and their disposal and also for military requirements of sugar, rice and wheat”.

(ii) Under the heading “MINISTRY OF HUMAN RESOURCE DEVELOPMENT (MANAV SANSADHAN VIKAS MANTRALAYA)”, under the sub-heading “D. DEPARTMENT OF CULTURE (SANSKRITI VIBHAG)”, after entry 13, the following shall be inserted, namely: -

“13.A, Museum of Gems and Jewellery,”

(iii) Under the heading “MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS (KARMIK, LOK SHIKAYAT TATHA PENSION MANTRALAYA)”, under the sub-heading “A. DEPARTMENT OF PERSONNEL AND TRAINING (KARMIK AUR PRASHIKSHAN VIBHAG)”, in Part III “VIGILANCE AND DISCIPLINE”, in entry 20, sub-entry (b) and the “Note” thereunder shall be omitted.

5-1 CVC/ND/87

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

No.399/33/2006-AVD-III
Government of India
Minister of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, dated the 6th November, 2006

OFFICE MEMORANDUM

Subject: Guideline for checking delay in grant of sanction for prosecution.

The Hon'ble Delhi High Court on its own motion has taken Suo-moto cognizance of a newspaper report, relating to long delays in grant of sanction for prosecution cases. The Hon'ble Court has expressed its concern over the non-action on the part of competent authorities in granting sanction for prosecution, despite the fact that the Hon'ble Supreme court in Vineet Narain Vs Union of India had directed that "time limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any Law Officer in the AG's office".

2. Delay in the disposal of sanction of prosecution cases is not in this interest of the Government. The Government is keen that innocent officers should not needlessly face harassment through prosecution while at the same time the culpable and guilty officers should not escape prosecution on account of failure of the competent authority to appreciate properly the fact brought out in the CBI investigation reports. To ensure that cases for grant of sanction for prosecution are disposed of quickly, it has been decided that the following measures should be adopted with immediate effect: -

(i) In cases investigated by the Central Bureau of Investigation against any public servant who is not removable from his office except with the sanction of the President, the CBI forwards its final report of investigation to the CVC and also simultaneously endorses a copy of the report to the administrative Ministry/Department concerned, the competent authority shall within three weeks formulate its tentative view regarding the action to be taken and seek the advice of the CVC in the matter.

(ii) The CVC would tender its advice within ten days to the concerned administrative Ministry/Department, which shall finalize its view in the matter within a week and issue orders for sanction for prosecution accordingly.

(iii) The concerned Ministry/Department shall refer the case to CVC for reconsideration only in exceptional cases when new facts come to light. The Committee of experts proposed to be set up by the CVC, with experts drawn from the civil services, public sector undertakings and banks shall examine the CBI's recommendation and the tentative view of the concerned Ministry/Department in greater detail and CVC would render appropriate advice to the competent authority based on the findings of the expert committee, within a fortnight.

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

(iv) If the CVC on reconsideration advises for grant of sanction, the concerned Ministry/Department will issue the requisite orders immediately. However, if the concerned Ministry/Department proposes not to accept the reconsidered advice of the CVC, the case will be referred to the Department of Personnel and Training for a final decision, as per the DOP&T O.M. No/134/2/85-AVD-I dated 17.10.1986.

(v) The responsibility of processing cases for sanction of prosecution within the time limits laid down shall continue to remain with the Administrative Ministries/Departments. All pending cases for the sanction of prosecution would be reviewed every month by the concerned Secretary to ensure that a decision in a case for grant of sanction for prosecution is taken within the given time frame.

(vi) The Central Vigilance Commission will call (as proposed by it) a meeting of Secretaries of such Departments, where there are delays in according sanction for prosecution, for a review from time to time and draw DOP&T's attention on such delays.

(vii) In case a decision is not taken by the Administrative Ministry/Department within the time limit laid down, the concerned Secretary of the Department shall mandatorily forward a written explanation to the Cabinet Secretary for appropriate examination by the competent authority.

(viii) All such delayed cases will be placed before a committee to be chaired by Secretary (Personnel) and comprising the Secretary of the Administrative Ministry/Department, Law Secretary and Director, CBI for scrutiny and recommendation. A copy of the explanation furnished by the Secretary of the Administrative Ministry/Department shall also be placed before the Committee. The recommendations of the Committee shall be forwarded to the Cabinet Secretary for orders of the competent authority.

(P.K. Tripathi)
Director (Vigilance)

To
(Secretary, by name), All Ministries/Department of Government of India.

Copy to: (i) Secretary, CVC
(ii) Director, CBI
(iii) others as per standard list

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

No. 399/33/2006-AVD-III
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, the 20th December 2006.

OFFICE MEMORANDUM

Subject: Guideline for checking delay in grant of sanction for prosecution.

In continuation of this Department's O.M. of even number dated 6th November 2006 on the subject mentioned above, it has been decided to amend para 2 (iv) of the O.M. dated 6th November 2006 which shall now be read as under: -

"2. (iv) If the CVC on reconsideration advises for grant of sanction, the concerned Ministry/Department will issue the requisite orders immediate. However, if the concerned Ministry/Department proposes not to accept the reconsidered advice of the CVC, the case will be referred to the Department of Personnel and Training for a final decision, as per the DOP&T O.M. No.134/2/85-AVD-I dated 17.10.1986. The Department of Personnel & training shall decide the case within three weeks and convey its decision to the concerned Ministry/Department."

(Harjot Kaur)
Director (Vigilance)

To
(Secretary, by name), All Ministries/Departments of Government of India.

Copy to: (i) Secretary, Central Vigilance Commission (CVC), New Delhi.
(ii) Director, Central Bureau of Investigation (CBI), New Delhi.
(iii) Others as per standard list.

COMPENDIUM ON VIGILANCE AND DISCIPLINARY PROCEEDINGS AGAINST AIS OFFICERS

No. 010/CRD/003/103208
Central Vigilance Commission

Satarkta Bhawan, GPO Complex,
INA, New DelhiDated 28th September 2010Circular No. 33/09/10**Sub: Guidelines for checking delay in grant of sanction for prosecution-reg.**

Attention is invited to Department of Personnel & Training's Office Memorandum No. 399/33/2006-AVD-III dated 06/11/2006 and dated 20/12/2006 and Commission's Circular No. 22/06/10 dated 23/06/2010 regarding guidelines for checking delay in grant of sanction for prosecution. It has been prescribed that Ministries/Departments. /Organizations are required to formulate their tentative views within three weeks of receipt of CBI's requests seeking sanction for prosecution and seek the advice of the Commission.

2. It has come to the notice of the Commission that the provisions of the DoPT circular referred above, are not strictly adhered to. It is therefore, decided that in case the Commission does not receive communication/comments on CBI report from the competent authority within 3 weeks. The Commission would Suo-moto tender its advice. Any communication/comments received from competent authority after three weeks but before 31 days will be entertained by the Commission as a reconsideration request and CVC within a fortnight. After consulting experts, will tender its advice. Any receipt of CBI's report will not be entertained by the Commission and will be sent to DoPT for a final decision.

(Vineet Mathur)
Director

To

