CHAPTER VI

PENAL PROVISIONS PERTAINING TO BRIBERY AND CORRUPTION AMONG PUBLIC SERVANTS

General

1.1. The Prevention of Corruption Act, 1988 (No.49 of 1988) has been enacted to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith. It received the assent of the President on 9th September, 1988 and has come into force from that date in terms of Section 5 of the General Clauses Act, 1897. The new Act repeals the Prevention of Corruption Act, 1947 and the Criminal Law Amendment Act, 1952. It also omits Sections 161 to 165-A (both inclusive) of the Indian Penal Code. However, notwithstanding such repeal, but without prejudice to the application of section 6 of the General Clauses Act, 1897, anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed, in so far as it is not inconsistent with the provisions of the new Act, shall be deemed to have been done or taken under or in pursuance of the corresponding provisions of the new Act.

1.2 Some of the major changes brought into the Prevention of Corruption Act, 1988, are as under:-

a) The definition of 'public servant' has been enlarged ;
b) A new concept of public duty has been introduced for the first time [Section 2 (c)(viii);
c) Minimum sentence of six months has been prescribed for the offences committed under the Act. The Courts have been denied any discretion, either for special or adequate reasons, to reduce the sentence from six months;
d) The State Government or as the case may be, the Central Government has now the power to make an application to the District Judge for the attachment of the money or property which is believed to have been acquired by the public servant by corrupt means;
e) The concept of "known sources of income" has undergone a

radical change. This now means not only the income received from any lawful sources but also that such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time-being applicable to the public servant.

2. Definition of Public Servant

2.1 The definition of public servant has been enlarged so as to include the office-bearers of the registered co-operative societies receiving any financial aid from the government, of from a Government Corporation/ Company, the employees of universities, Public Service Commissions, and Banks etc. Section 2 (c) of the Prevention of Corruption Act, 1988, defines the public servant as under:-

i) Any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
ii) Any person in the service or pay of a local authority;
iii) Any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;
iv) Any judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicator functions;
v) Any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver of commissioner appointed by such court;
vi) Any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;
vii) Any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;
viii) Any person who holds an office by virtue of which he is authorised or required to perform any public duty;

ix) Any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;

x) Any person who is a chairman, member of employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

xi) Any person who is a vice-chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

xii) Any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority;

Explanation 1 - Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2 - wherever the words "Public Servant occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation"

3. Public Servants taking gratification other than legal remu-

neration and abetment thereof - offences and penalties.

Section 7 to 12 of the PC Act, 1988, correspond to Section 161 to 165-A of the Indian Penal Code and relate to the offence pertaining to taking gratification, in cash or kind, other than legal remuneration in respect of an official act, or to influence public servants or for exercise of personal influence with public servant, and/or abetment thereof, and the punishments for such offences. These sections are discussed in the succeeding paragraphs.

3.1. Public servant taking gratification other than legal remuneration in respect of an official act.

3.1.1 Section 7 of the PC Act, 1988, corresponds to repealed Section 161 IPC with the modification that the minimum punishment has been prescribed as imprisonment of six months and the maximum punishment has been increased from three years to five years. The relevant section is reproduced below:-

"7 Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (C) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine".

Explanations

a) *"Expecting to be a public servant"* - If a person not expecting to be in office obtains a gratification by deceiving others into a be-

lief that he is about to be in office, and that he will then serve them he may be guilty of cheating, but he is not guilty of the offence defined in this section.

b) *"Gratification"* - The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

c) *"Legal remuneration"* - The words "Legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves to accept.

d) *"A motive or reward for doing."* - A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section."

3.1.2. A public servant or a person expecting to be a public servant renders himself guilty of an offence under Section 7 of the PC Act, 1988:-

(i) if he accepts or obtains, or agrees to accept, or attempts to obtain from some person a gratification;

(ii) if such gratification is not a legal remuneration due to him;

(iii) if he accepts such gratification as a motive or reward;

a) doing or forbearing to do, an official, act, or

b) showing, or forbearing to show, favour or disfavour to someone in the exercise of his official functions; or

c) rendering or attempting to render any service or disservice to any person with the Central or any State Government or Parliament or the Legislators of any State or with any local authority, corporation or Government company or with any public servant.

3.1.3. It is not necessary that the public servant must himself have the power or must himself be in a position to perform the act, or show favour or disfavour, for, doing or showing, which the bribe has been given to him nor is it necessary that the act for doing which the bribe is given should actually be performed. It is sufficient if a representation is made that it has been or that it will be performed and a public servant, who obtains a bribe by making such representation renders himself guilty under this Section even if he had or has no intention to perform and has not performed or does not actually perform that act. It is not necessary that favour was in fact shown to the person who offered the bribe. It is sufficient if the person giving the gratification is led to believe that the matter would go against him if he did not give the gratification [Bhimrao, A.I.R. (1925) Bombay 261].

3.1.4. A public servant arrogating to himself a power which he does not possess, for the exercise of which he receives a bribe is liable to conviction under this Section (Ajudhia Prasad, I.L.R./51 Allahabad 467).

3.1.5. A public servant accepting a donation for a public purpose such as a donation to a public institution or donation for any charitable or religious purpose in which he is interested would amount to an offence under this Section if the motive for such payment was for showing favour to the donor in his official acts or if the donation was made as a reward for a favour shown in the past. Where, however, such donation is made to public servant independently of his doing any official act, no offence is committed. [Emperor Vs. Tyabjee, A.I.R. (1923) Bombay 44].

Rule 12 of the CCS (Conduct) Rules, 1964, however, prohibits Government servants from asking for or accepting contributions or collections in cash or in kind in pursuance of any object, whatsoever, except with the previous sanction of the Government or the prescribed authority.

3.1.6 A public servant cannot justify his acceptance of gift or a bribe by urging that the order passed by him was nevertheless a just one and against the very person the bribe is given is a just and proper one. [A. W. Chandekar, A.I.R. (1925) Nagpur 313].

3.1.7. The word 'motive' refers to a future act while the word 'reward' to a past favour.

3.1.8. The word "gratification" is not defined but its sense is extended by the explanation which says that the word "is not restricted to any pecuniary gratification, or to gratification estimable in money". The word "gratification" is thus used in its larger sense as connoting anything which affords gratification or satisfaction or pleasure to the taste appetite or the mind.

3.2. **Section 8 & 9 of the Prevention of Corruption Act 1988**

3.2.1 Sections 8 and 9 of the Prevention of Corruption Act, 1988, correspond to repealed Section 162 and 163 of the Indian Penal Code and are reproduced below:-

> "8 *Taking Gratification, in order by corrupt or illegal means to influence public* - Whoever accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any per-

son, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament of the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine".

"9. *Taking gratification for exercise of personal influence with public servant* - Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any persons with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any pubic servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine".

3.2.2. Under Sections 8 and 9 of the PC Act, 1988 it is an offence for a person to accept any gratification as a motive or reward for improperly influencing a public servant by corrupt or illegal means or by the exercise of personal influence. Though these Sections cover all person whether or not they are public servants, in effect their provisions will be made use of only when the offender is a person other than a public servant and such cases will not need to be dealt with administrative authorities. If a person committing an offence under these Sections is public servant, the proper Section to convict him will be Section 7.

3.3. Section 10 of the PC Act, 1988

3.3.1 Section 10 of the PC Act, 1988 corresponds to repealed Section164 of the Indian Penal Code. It is reproduced below:-

> "10. *Punishment for abetment by public servants of offences defined in Sections 8 and 9* - Whoever, being a public servant, in respect of whom either of the offences defined in section 8 or section 9 is committed, abets the offence, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five year and shall also be liable to fine".

3.3.2 This Section is intended to punish abetment by a public servant of offences mentioned in Sections 8 and 9 when committed in respect of the public servant himself. This may be illustrated as under:-

> "A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give on office to a particular person. A abets here doing so".

3.4. Section 11 of the PC Act, 1988

3.4.1. Section 11 of the PC Act, 1988 corresponds to repealed Section 165 of the Indian Penal Code. It is reproduced below:-

> "11 *Public Servant obtaining valuable thing without consideration from persons concerned in proceeding or business transacted by such public servant* - Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from

any person whom he knows to have been or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine".

3.4.2. Under this Section, it is an offence for a public servant to accept or agree to accept or to attempt to obtain for himself or for any other person any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant or from any person, he knows to be interested in or related to the person so concerned.

3.4.3. Under Section 7, the gratification is taken as a motive or reward but under Section 11, the question of motive or reward is not material. The mere taking of a valuable thing without consideration or for an inadequate consideration from a person having any connection with the official functions of the public servant constitutes an offence.

3.4.4. This Section prohibits a public servant from taking an unconscionable advantage out of a bargain with a person with whom he comes in contact officially. It does not prohibit a sale or a purchase by a public servant, at a fair price, to or from a person with whom the public servant may be transacting business on behalf of Government in his official capacity.

3.5. **Section 12 of the PC Act, 1988**

3.5.1 Section 12 of the PC Act, 1988, corresponds to repealed Section 165-A of the Indian Penal Code. It is reproduced below:-

"12 *Punishment for abetment of offences defined in Section 7 or 11.* - Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine."

3.5.2 Under this Section, the offering of a bribe or a valuable thing to a public servant without consideration or for an inadequate consideration is an offence by itself and not merely an offence of abetment.

3.5.3 The relevant point to consider is the state of mind of the accused when he offers a bribe or a valuable thing. As soon as there is an instigation to a public servant to commit an offence under Section7, an offence under Section 12 is complete quite irrespective of the fact whether the public servant did not accept or consent to accept the money or whether he was or he was not a position to do the act or to show a favour or disfavour [Padam Sen Vs. State, AIR (1959) Allahabad 707].

4. Offences of criminal misconduct.

4.1. Section 13, 14, 15 and 16 of the PC Act, 1988 correspond to Sections 5(1), 5(2), 5(3A) and 5(3B) of the repealed Prevention of Corruption Act, 1947, and pertain to the offences of criminal misconducts and the punishments for such offences. The major change brought about in the PC Act, 1988, pertains to withdrawal of the Court's powers to impose a sentence of imprisonment less than the sentence provided in the Act.

4.2. Sections 13(1) (a) and (b) of the PC Act, 1988

4.2.1 Section 13(1) (a) and 13(1) (b) of the PC Act, 1988 correspond to Sections 5(1) (a) and 5(1) (b) of the repealed Act of 1947 and are reproduced below:-

"13(1)A public servant is said to commit the offence of criminal misconduct -

(a) If he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or regard such as mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to acept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned."

4.2.2 The offences specified under clauses (a) and (b) of Section 13(1) of the Prevention of Corruption Act, 1988, have the same ingredients as those specified in Section 7 and 11 of the Act. The fundamental difference between the two provisions of the two Acts is that offences under Section 13(1) (a) and 13(1) (b) are an aggravated form of those provided for in Sections 7 and 11. Whereas under Section 7 and 11, a prosecution can be laid even in the case of a single act of acceptance of illegal gratification, there must be habitual commission of the offence to attract clauses (a) and (b) of Section 13(1) of the Prevention of Corruption Act. Another point of difference is that, while punishment of imprisonment from minimum of one year and up to maximum of seven years has been prescribed under Section 13(2) for the offence committed under Sections 13(1)(a)

and 13(1) (b) of the Act, the punishment of imprisonment for the office committed under Sections 7 and 11 may vary from a minimum of 6 months to a maximum of five years.

5. Section 13(1)(c) of Prevention of Corruption Act, 1988

5.1. This clause corresponds to Section 5(1) (c) of the repealed PC Act, 1947 and provides that if a public servant dishonestly or fraudulently misappropriates himself or allows any person to misappropriate any property entrusted to him in his official capacity, he is guilty of criminal misconduct.

5.2. The offence mentioned in this clause is analogous to that mentioned in Section 409 of Indian Penal Code. However, whereas under Section 409 of the Indian Penal Code, a public servant is guilty only if he commits the criminal breach of trust himself, under clause 13(1)(c) of the Prevention of Corruption Act, he is guilty, whether he himself misappropriates or allows any other person to misappropriate property entrusted to him in his official capacity. Another difference between the two sections is that while under Section 409 of the Indian Penal Code, no minimum punishment is prescribed and the maximum punishment may be imprisonment for life or imprisonment which may extend to 10 years, the minimum punishment under Section 13 of the Prevention of Corruption Act is one year and the maximum seven years.

5.3. In cases which fall both under Section 409 of Indian Penal Code and under clause (c) of Section 13(1) of Prevention of Corruption Act, prosecuting agency may charge the public servant under the Indian Penal Code or under the Prevention of Corruption Act as it may consider appropriate in each case. The gravity of the offence and other relevant matters will need to be taken into consideration in exercising the discretion. If the facts disclose the commission of a serious offence for which the maximum punishment provided for under the Prevention of Corruption Act is not sufficient, the accused may be charged under Section 409 of Indian Penal Code which provides for severe punishment for the same kind of offence. The public servant

may also be charged simultaneously both under Section 409 of the Indian Penal Code and Section 13(1) (c) of the Prevention of Corruption Act 1988. The advantage of such combination will be that in the event of conviction, the punishment to be awarded by the Court will be subject to a minimum of one year as prescribed in the Prevention of Corruption Act and the maximum may go up to on a term of imprisonment up to ten years as prescribed in the Indian Penal Code.

5.4. In cases in which the alleged offence falls both under Section409 of the Indian Penal Code and under Section 13(1) (c) of the Prevention of Corruption Act and in which a public servant is charged under the Prevention of Corruption Act only, the question may arise whether on his acquittal of that charge the public servant could be tried again under Section 409 of the Indian Penal Code. The Supreme Court (State of Madhya Pradesh Vs. Veerashwar Rao) has held that there can be no objection to a trial and conviction under Section 409 of Indian Penal Code even if the accused has been acquitted of an offence under Section 5(1) (c) of the Prevention of Corruption Act, 1947 (analogous to Section 13(1)(c) of the PC Act, 1988).

6. Clause (d) of Section 13(1)

6.1. This clause corresponds to Sections 5(10)(d) of the repealed PC Act, 1947, and provides that if a public servant by corrupt or illegal means or by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage, he is guilty of criminal misconduct. This offence has not been provided for in the Indian Penal Code. 'motive or reward' has no relevance for an offence under this clause. It is enough if it is proved that the public servant has obtained a valuable thing or a pecuniary advantage either for himself or for any other person by abusing his official position, or by corrupt or illegal means.

7. Clause (e) of Section 13(1)

7.1. This clause corresponds to Section 5(1) (e) of the repealed PC Act,

1947, and provides that if a public servant or some person on his behalf is or has at any time during the period when the public servant was in office, been in possession of assets disproportionate to his known source of income for which the public servant cannot satisfactorily account, he is guilty of criminal misconduct.

8. Presumption of the guilt of the accused

8.1 The normal rule of jurisprudence is that it is the duty of the prosecution to prove beyond a shadow of doubt all the ingredients of the offence. The accused is not required to prove that he is not guilty.

8.2 Section 20 of the Prevention of Corruption Act, 1988 makes it obligatory for the court to make certain presumptions against the accused. When it has been provided that the accused who is charged of an offence under Section 7 or 11 or 12 has received any gratification other than legal remuneration or any valuable thing without adequate consideration, the court is bound to presume under Section 20 (1) of the Prevention of Corruption Act that the gratification or the valuable thing was received with a motive or as a reward as is mentioned in Section 7, or for an inadequate consideration as is mentioned in Section 11 of the Act. All that the prosecution has to prove is the mere receipt of gratification or the valuable thing by the accused, for when receipt of such gratification or valuable thing is admitted by the accused, the prosecution is not required to prove affirmatively anything more to show that the gratification was received as a bribe or illegal gratification. If the accused wants to suggest that he had not accepted the gratification or the valuable thing with the motive or as a reward for exercising any official favour or disfavour, it would be for him to establish that.

8.3 To raise the presumption under Section 20 (1) of Prevention of Corruption Act, the prosecution has to prove that the accused has received "gratification other than legal remuneration". When it is shown that the accused has received a certain sum of money which was not his legal remuneration, the condition prescribed by the Section is satisfied and the presumption must be raised. Further mere

receipt of "money" is sufficient to raise the presumption (V.D. Jhingan Vs State of U.P., A.I.R. 1966 S.C. 1672).

8.4 An impression may be created in some quarters that in view of the presumption under Section 20 (1) of the Prevention of Corruption Act, the task of prosecution has become very easy inasmuch as whenever receipt of money is proved, the authority deciding to launch a prosecution or great sanction under Section 19 of the Prevention of Corruption Act, need not concern itself with the probable defence of the accused person. Nothing could be further clarified that the burden of proof lying upon the accused under Section 20 (1) of the Prevention of Corruption Act will be satisfied if he establishes his case by a preponderance of probability as is done by a party in civil proceedings. It is not necessary that he should establish his case by the test of proof beyond a reasonable doubt. Consequently, before launching prosecution one has to rule out a possibility of defence put up by the accused person which, if proved, may amount to preponderance of probability in his favour and it must be clearly understood that the quantum of proof expected of the accused is less than that expected from the prosecution which has to prove the case beyond a reasonable doubt. The Supreme Court in Harbhajan Singh Vs State of Punjab has reiterated this principle thus :-

> "There is a consensus of judicial opinion in favour of the view that where the burden of an issue lies upon the accused he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. This, however, is the test prescribed while deciding whether the prosecution has discharged its onus of proving the guilt of the accused".

8.5 Under Section 20 (2) of the Prevention of Corruption Act, a similar presumption is to be made against the accused charged under Section 12 or 14(b) of the Prevention of Corruption Act, 1988 as soon as it is proved that any valuable thing had been given or attempted to be given to a public servant.

8.6 The only exception when such presumption may not be drawn by the court is provided for in sub-section (3) of Section 20 of the Prevention of Corruption Act, 1988, which lays down that the court may de-

cline to draw the presumption if the gratification in its opinion is so trivial that no inference of corruption could fairly be drawn.

8. Accused to be competent witness

Under Section 21 of the Prevention of Corruption Act, 1988, a person charged under the Act, is a competent witness for his defence and can give evidence on oath in disproof of the charges made against him or against a co-accused.

10. Matters to be taken into consideration for fixing fine

Section 16 of PC Act 1988 provides that where a sentence of fine is imposed under sub-section (2) of section 13 or section 14, the court in fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of Section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

CHAPTER VII

PROSECUTION

1.Sanction for prosecution

Under Section 19 of the Prevention of Corruption Act, 1988, it is necessary for the prosecuting authority to have the previous sanction of the appropriate administrative authority for launching prosecution against a public servant. For ready reference, the text of the Section is reproduced below:-

> "19(1) No court shall take cognizance of an offence punishable under Section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction -
>
> (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his offence save by or with the sanction of the Central Government, of that Government;
>
> (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his offence, 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.
>
> (2) 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 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.

1.2. Section 19(3) of the Prevention of Corruption Act, 1988, lays down that, notwithstanding anything contained in the Code of Criminal Procedure, 1973 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. It also lays down that 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 unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby. In determining whether the absence or, 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 or should have been raised at an earlier stage in the proceedings.

1.3. The sanction for prosecution of 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 also necessary, under section 197(1) of the code of Criminal Procedure, 1973, if he is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of official duty. The authorities competent to accord such sanction are as under:-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of alleged offence employed, in connection with the affairs of the Union, the Central Government, and

(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 of the State, the concerned State Government.

2. Need for sanction

2.1. The requirement of previous sanction is intended to afford a reasonable protection to a public servant, who in the course of strict and impartial discharge of his duties may offend persons and create enemies, from frivolous, malicious or vexations prosecution and to save him from unnecessary harassment or undue hardship which may result from an inadequate appreciation by police authorities of the technicalities of the working of a department. The prosecution of a Government servant for an offence challenging his honesty and integrity has also a bearing on the morale of the pubic services. The administrative authority alone is in a position to assess and weigh the accusation against the background of their own intimate knowledge of the work and conduct of the public servant and the overall administrative interest of the State.

2.2. The sanctioning authority has an absolute discretion to grant or to withhold sanction after satisfying itself whether the material placed before it discloses a prima facie case against the person sought to be prosecuted. It is the sole judge of the material that is placed before it. If the facts placed before it are not sufficient to enable to exercise its discretion properly, it may ask for more particulars. It may refuse sanction on any ground which commends itself to it if it considers prosecution as inexpedient.

2.3. However, a public service who is alleged to have committed an offence should be allowed to be proceeded against in a court of law, unless on the basis of the facts placed before it the sanctioning authority considers that there is no case for launching a prosecution. That a case might lead to an acquittal will not be enough reason for withholding sanction. Whether the evidence available is adequate or not is a matter for the court to consider and decide. For the sanctioning authority to be guided by such considerations will not be proper and may lead to suspeicion of partiality and protection of the guilty person. Therefore, normally sanction for prosecution should be accorded even if there is some doubt about its result.

2.4. The protection of previous sanction is available to a public servant even if he has ceased to be so by the time the court is asked to take cognizance of the offence committed by him when he was a public servant while acting or purporting to act in the discharge of his official duties Under Section 197 of the Criminal Procedure Code as amended in 1974 (Act 2 of 1974), when a person who is or was a public servant, and removable from office save with the sanction of the Government, is accused of an offence committed by him while acting or purporting to act in the discharge of his official duties, then no court can taken cognizance of an offence without the previous sanction of the Government which was competent to remove him from office at the time of commission of the offence. Thus if a public servant is to be prosecuted after retirement in respect of an offence committed by him while in service in the course of his official duties, then sanction of the authority which was competent to remove him from office at that time should be obtained.

2.5. If the prior sanction of the competent authority is not obtained, the trial would be ab initio void and if commenced will have to be set aside. A fresh prosecution would be necessary after a proper sanction has been obtained and a charge-sheet against the accused will need to be filed afresh for his trial for offence covered by the sanction.

2. Authority Competent to sanction prosecution

3.1. Under section 19(1) of the Prevention of Corruption Act, 1988, the authority competent to sanction prosecution will normally be:-

a) in the case of a Central Government servant who is employed in connection with the affairs of the Union and is removable from his office by the Central Government - Central Government;

b) in the case of a State Government servant who is employed in connection with the affairs of the State and is removable from his office by the State Government - State Government;

c) in the case of any other public servant - authority competent to remove him from his office.

The words, "is employed" used in section 19(1) and "is removable" in clauses (a) and (b) and "competent to remove him from his office" used in clause (c) are significant and clearly show that the authority contemplated in section 19 is the one competent to remove the public servant holding the office on the date when the court is asked to take cognizance of the offence and not any public servant holding the office held by the accused.

3.2. Clauses (a) and (b) above will apply to persons who are employed in connection with the affairs of the Union or in connection with the affairs of a State and are removable from office by the Central Government or by the State Government, respectively. Government employees or other public servants who do not fall in these two categories, for example, a Government servant who is removable from his office by an authority lower than the Central or the State Government will fall under clause (c) and the authority competent to remove him from service will be authority competent to sanction prosecution. The case of a Government servant whose services have been lent by one Government to another will also fall under clause (c) and the authority competent to sanction the prosecution will be the authority competent to remove such Government servant from service, which may be either the Central Government or the State Government or an authority lower than the Central or the State Government as the case may be. The expression "Central Government" by virtue of Sec. 3(8) of the General Clauses Act, 1897 means the 'President'.

3.3. Sub-section (2) of section 19 of the Prevention of Corruption Act, 1988 further provides that where for any reason whatsoever any doubt arises as to whose previous sanction should be obtained under sub-section (1), the sanction shall be given by the 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.

3.4. Normally, sanction should be accorded by the competent authority. However, if in any case sanction has been accorded by an authority higher than the competent authority, such a sanction will not be invalid. In State Vs. Yash Pal (AIR 1957 Punjab 91), while the Assistant Inspector General, who ranked with a Superintendent of Police, was the authority who appointed the accused and sanction for prosecution was given by the Deputy Inspector General, an authority higher in the rank than the Superintendent of Police, it was held that sanction did not contravene the provisions of Sec. 6(1)(c) of the Prevention of Corruption Act, 1947, which is analogous to Section 19(1)(c) of the Prevention of Corruption Act, 1988.

4. Form of sanction

4.1. In the Prevention of Corruption Act, 1988 no particular form or set of words has been prescribed in which the sanction to prosecution need be set out. The sanction, however, represents a deliberate decision of the competent sanctioning authority. The courts expect that a sanction, for which no particular form has been prescribed by law, should ex facie indicate that the sanctioning authority had before it all the relevant facts on the basis of which prosecution was proposed to be launched and had applied its mind to all the facts and circumstances of the case before according its sanction.

4.2. It is no doubt permissible to prove by evidence that the competent authority had applied its mind to the facts of the case. However, to avoid delays and expense and for the sake of convenience and uniformity of practice, two standard forms have been drawn up for the purpose. The form E-7 is to be used in cases where Central Government is required to sanction prosecution and the form E-8 in other cases where sanction to prosecution is to be given by an authority other than the Central Government.

5. Fresh sanction after re-investigation

A sanction for prosecution given on the basis of the material collect during an investigation will not be rendered void if the investigation was later found to be invalid. However, if the reinvestigation reveals any new facts, it is desirable that sanctioning authority should consider afresh whether the public servant should be prosecuted after taking into account all the facts revealed by fresh investigation. If the fresh investigation does not reveal any new facts and there is no change in the nature of the offence for which sanction for prosecution was accorded earlier, the previous sanction will hold good and it will not be necessary for the competent authority to grant a fresh sanction after valid reinvestigation (AIR 1962 Bombay 205).

6. Authentication of sanction issued by Central Government

6.1. Where the sanction is issued by the Central Government, it will be authenticated by the signature of an officer who is authorised under Article 77(2) of the Constitution to authenticate orders and other instruments made and executed in the name of the President. A copy of the Ministry of Home Affairs notification containing the Authentication (Orders and other Instruments) Rules, listing the officers who are so authorised is given in Section A(16).

6.2. The validity of a sanction issued by the Central Government may be proved by the prosecution by production of the following documents in the court:-

(i) a copy of the notification issued under Article 77(2) of the Constitution referred to above;

(ii) a copy of the Gazette Notification relating to the appointment of the officer signing the order to the office held by him at the time of the issue of the order of sanction.

7. Authentication of sanction issued by other competent authority

7.1. Where the sanction is to be issued by other competent authority, the order of sanction will be signed by the officer who is competent to remove the accused public servant from his office at the time when the offence is to be taken cognizance of by the court if the sanction is to be accorded under Section 19(1) or by the officer who was competent to remove him from office at the time when the offence was committed if the order is to be issued under Section 19(2).

7.2. The validity of such sanction may be proved by the prosecution by production of a copy of the Gazette Notification relating to the appointment of the officer signing the sanction to the office held by him at the time of the issue of the sanction by virtue of which he is competent to issue the order of sanction or the order of appointment in the case of an officer whose appointment is not notified in the Gazette.

8. Proof of signature

An order of sanction to prosecute a Government servant is a public document within the meaning of section 74 of the Indian Evidence Act. Under section 77 of the Evidence Act, it is permissible to produce in proof a certified copy of a public document and it should not be necessary to prove the signature of the officer who had signed or authenticated the order of sanction. But the court may in certain circumstances refuse to take judicial notice of the signature. To meet such a contingency, the name of a witness who is familiar with the signature of the officer who has authenticated or signed the order of sanction should be listed in the charge-sheet to prove the signature. Such a witness, however, need not be summoned unless the court has declined to take judicial notice of the signature.

9. Investigation by Central Bureau of Investigation

As a general rule, allegations involving offences punishable under law will be investigated, at the instance of administrative authority or as a result of information gathered through their own sources, by the Delhi

Special Police Establishment of the Central Bureau of Investigation. Please see also Chapter III, paragraph 1.2.(i).

10. Procedure for obtaining sanction of Central Government

10.1. 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 Central Government (President), they will forward the final report of their investigation to the Central Vigilance Commission and will simultaneously endorse a copy of the report to the administrative Ministry/Department concerned. The Central Bureau of Investigation recommends prosecutions of persons only in those cases in which they 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 useful examination of all the facts and circumstances of the case. Hence any decision not to accord sanction for prosecution in such case, should therefore be for very valid reasons. C(21) C(51) C(57) C(67)

10.2. The administrative Ministry/Department concerned will send their comments or a reply to the effect that they have no comments to make to the Central Vigilance Commission within two months from the receipt of the report of the Central Bureau of Investigation. In any exceptional case if the administrative authority feels that it will take more than two months to come to a conclusion, the Central Vigilance Commission should be informed about the time by which it would be feasible to send the comments. After considering the report of the Central Bureau of Investigation and the comments, if any, received from the administrative, Ministry/Department and any other relevant records, the Central Vigilance Commission will advise the Ministry/Department concerned who would consider the advice of the CVC and take a decision as to whether or not the prosecution should be sanctioned. If the CVC advises for grant of sanction for prosecution but the Ministry/Department proposes not to accept such advice, the case should be referred to the Department of Personnel & Training for a final decision.

10.3. There might be cases investigated by the C.B.I. in which public servants of different categories are involved, some of whom are removable by the President, while others by an authority lower than the President. The sanction for prosecution in respect of some of the officers is required to be issued in the name of the President and in respect of the others by other authorities. The C.B.I. will send its final report in such a case in respect of all the accused officers to the Commission and will simultaneously endorse copies of its report to the Ministries/Departments/ Public undertakings/Nationalised Banks concerned. The competent authorities should forward their comments to the Commission as soon as possible and in any case not later than two months from the receipt of the CBI report. In cases in which the administrative Ministries/ Department/Public Undertakings/Nationalised Banks have no specific comments to make, a reply to that effect should be sent to the Commission without any delay. On receipt of the Commission's advice, the sanction for prosecution will have to be issued by the competent authorities in the Ministry/Departments concerned. In such cases the CBI will not file charge-sheets in the court piece-meal. The charge-sheet will be filed by the CBI in the court of competent jurisdiction against all the officers involved together after sanctions for prosecution have been received from all the competent concerned authorities.

C(107)

10.4. Normally it should be possible to issue the sanction for prosecution in about 2 months from the date of receipt of the Commission's advice. It is suggested that, as far as possible, this time-limit may be observed in all cases of sanction for prosecution.

10.5. In the case of All India Service Officers serving in connection with the affairs of the State Government, Central Government's sanction is required for prosecution, under section 19(1) of the Prevention of Corruption Act, 1988. It would be appropriate that before moving the Central Government for sanction in such a case, the State Government should themselves take a firm decision that, in their opinion, a case for prosecution is made out and they should either issue their sanction under section 197, Cr. Procedure Code or they should, before moving the Central Government, obtain the firm orders of the competent authority

B(106)

in the State Government hierarchy that the State Government would issue their sanction simultaneously with the Central Government's decision to sanction the prosecution under the provisions of the Prevention of Corruption Act, 1947. There is otherwise also the risk that courts may take a view, that the State Government had not really applied its mind before according sanction in terms of section 197, Cr. P.C. in case the State Government's sanction just follows the Central Government's sanction under the provisions of the Prevention of Corruption Act. This might result in a lacuna leading to the legal proceedings being quashed or held up.

11. Procedure for obtaining sanction of other competent authority

C(21)

11.1 In cases in which the order of sanction for prosecution is to be issued by an authority other than the Central Government, the Central Bureau of Investigation will forward the final report of its investigation to such authority who will decide whether or not prosecution should be sanctioned. Delays in issuing the sanction hold up the launching of prosecution leading to delay in conclusion of the proceedings. Such delays also adversely affect the morale of public servants. The competent authorities may therefore take expeditious action in cases in which CBI recommend prosecution against public servants, and issue the sanction within a period of 2 months from the receipt of report of the Central Bureau of Investigation.

C(107)

11.2 If in any case, the competent authority does not propose to accord the sanction sought for by the SPE, action may be taken as under:-

i) In the case of government servants, the competent authority may refer the case to its Administrative Ministry/Department which may after considering the matter, either direct that prosecution should be sanctioned by the competent authority or by an authority next higher to the competent authority; or in support of the view of the competent authority, forward the case to the Central Vigilance Commission along with its own comments and all relevant material for resolving

C(172)

B(137) the difference of opinion between the competent authority and the CBI. If the Commission also advises grant of sanction for prosecution but the Ministry/Department concerned proposes not to accept such advice, the case should be referred to the Department of Personnel & Training for a final decision.

ii) In the case of public servants other than government servants (i.e. employees of local bodies , autonomous bodies, public sector organisations, nationalised banks, insurance companies etc.) the competent authority may communicate its views to the Chief Executive of the Organisation who may either direct that sanction for prosecution should be given, or in support of the views of the competent authority have the case forwarded to the Central Vigilance Commission for resolving the differences of opinion between the competent authority and the CBI.

C(172)

12. Cases where two or more Government servants belonging to different Ministries/Departments, or under the different cadre controlling authorities are involved.

Where two or more Government servants belonging to different Ministries/Departments, or under 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 procedure laid down in the above paragraphs 10 and 11. 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 Department of Personnel & Training for resolution of the conflict, if any, and for a final decision.

B(137)

13. Records to be sent with the report.

In cases of both types mentioned in paras 10 and 11 above, the Special Police Establishment will send to the administrative authorities

along with the report, such original documents as can be sent by them after retaining copies, if necessary. In respect of documents which the C(18)
Special Police Establishment would not like to part with for any reason, attested copies of them or extract from them or gist of their contents may be sent instead. In case the administrative authority would still like to see the original documents, the Special Police Establishment may be requested to make them available for inspection. If there are any documents which are not capable of being copied or even a gist of which cannot be prepared, the administrative authority may inspect such documents by arrangement with the Special Police Establishment.

14. Action after judgment

As soon as the judgment is pronounced a report about conviction/ acquitted/discharge of the accused public servant will be sent by the S.P.E. to the administrative Ministry concerned. The S.P.E. will also take immediate steps to obtain a copy of the judgement and to forward copies of it to the concerned authorities. While doing the so, the S.P.E. may give their comments, if any, on any matters arising out of the judgement.

Action on conviction

14.1. As soon as the report about the conviction is received from the B(58)
S.P.E., and if it happens that the Government servant convicted had not B(65)
been placed under suspension, the appropriate disciplinary authority should decide whether he should now be suspended. In cases where the B(86)
conviction is for a term of imprisonment exceeding 48 hours, the Government servant shall be deemed to have been suspended under Rule 10(2)(b) of Central Civil Services (Classification, Control and Appeal) Rules, 1965. A formal order about such deemed suspension will be issued by the disciplinary authority for purpose of administrative record.

14.2. Having come to know of the conviction of a Government servant on a criminal charge, the disciplinary authority must consider whether his conduct, which had led to his conviction, was such as warrants the imposition of a penalty and if so, what that penalty should be. In

considering the matter the disciplinary authority should take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely have on the administration and other extenuating circumstances or redeeming features. Once the disciplinary authority reaches the conclusion that the government servant's conduct was blameworthy and punishable, it must decide upon the penalty that should be imposed on the Government servant keeping in mind that the penalty imposed is not grossly excessive or out of all proportion to the offence committed, or one not warranted by the facts and circumstances of the case.

B(130)

14.3. If the disciplinary authority comes to the conclusion that the offence for which the public servant has been convicted was such as to render his retention in the public service prima facie undesirable, it can impose upon him under Rule 19(i) of the C.C.S. (C.C.A.) Rules, 1965, the penalty of dismissal or removal or compulsory retirement from service, as may be considered appropriate, with reference to the gravity of the office, without holding any enquiry, referred to in the proviso to article 311 (2) of the constitution.

E(20)

B(58)

14.4. In a case in which the offence for which a Government servant has been convicted is not considered such as to render his retention in public service prima facie undesirable, the appropriate disciplinary authority may impose any of the penalties, other than those of dismissal, removal or compulsory retirement from the service, specified in Rule 11of the C.C.S. (C.C.A.) Rules, 1965, as may be considered appropriate under Rule 19(i) of the rules without holding any further enquiry.

B(65)

B(86)

14.5. The Union Public Service Commission should be consulted, where such consultation is necessary, before any order are made in any case under Rule 19 of the C.C.S. (C.C.A.) Rules, 1965.

B(86)

14.6. The disciplinary authority may, if it comes to the conclusion that an order with a view to imposing a penalty on a Government servant on the ground of conduct which has led to his conviction on a criminal

charge should be issued, issue such an order without waiting for the period of filing an appeal or, if an appeal has been filed, without waiting for the decision in the first court of appeal. If, however, a restraining order from an appellate court is produced, action has, of course, to be withheld or taken according to the Court's direction.

15. Action after acquittal

15.1. In cases in which a public servant is acquitted by the trial court, the judgement will be examined by the S.P.E. to consider whether an appeal or an application for revision should be filed in the first court of appeal. If the S.P.E. come to the conclusion that such an appeal or an application for revision should be filed, a copy of the judgment together with the copy of the comments of the S.P.E. will be forwarded by them to the concerned administrative Department. If that Department agree with the recommendation of the S.P.E., a certified copy of the judgment and of the comments of the S.P.E. will be forwarded by them to the State counsel for filing an appeal or application for revision, as the case may be . A copy of such reference will be endorsed by the Department to the Central Bureau of Investigation.

15.2. In the case of a Government servant who was under suspension and against whose acquittal an appeal or a revision application is filed, it may be considered whether it is necessary to continue him under suspension. If not, the order of suspension may be revoked immediately.

15.3. If the Government servant is acquitted by the first appellate court, the S.P.E. will decide whether the acquittal should be challenged in a still higher court, and if it is so decided, action to institute proper proceedings will be taken by the S.P.E.

16. Departmental action after acquittal

16.1. If the Government servant is acquitted by trial or appellate

court and if it is decided that the acquittal should not be challenged in a higher court, the competent authority should decide whether or not despite the acquittal, the facts and circumstances of the case are such as to call for a departmental enquiry on the basis of the allegations on which he was previously charged and convicted. According to the ruling of the Supreme Court in Nagpur City Corporation vs. Ram Chandra and other [SC 396 of 1980-SLR 1981 (2)], even where the accused public servant is acquitted and exonerated of an offence, such acquittal does not bar a departmental authority from holding or continuing disciplinary proceedings against the accused public servant.

16.2. On identical set of facts and allegations may constitute a criminal offence as well as misconduct punishable under the C.C.S. (C.C.A.) Rules or other corresponding rules. If the facts or allegations had been examined by a court of competent jurisdiction and if the court held that the allegations were not true, it will not be permissible to hold a departmental enquiry in respect of a charge based on the same facts or allegations.

16.3. If, on the other hand, the court has merely expressed a doubt about the correctness of the allegations, a departmental enquiry may be held into the same allegations, if better proof than what was produced before the court is forthcoming.

16.4. If the court has held that the allegations are proved but do not constitute the criminal offence with which the Government servant was charged, a departmental enquiry could be held on the basis of the same allegations if they are considered good and sufficient ground for departmental action. Departmental action could also be taken if the allegations were not examined by court, e.g., the discharge of the accused on technical grounds without going into the merits of the allegations, but if the allegations are considered good and sufficient for departmental action.

E(21)

16.5. A departmental enquiry may be held after acquittal in respect

of a charge which is not identical with or similar to the charge in the criminal case and is not based on any allegations which have been negatived by the criminal court.

16.6. If it is decided that a departmental enquiry should be held in any of the circumstances mentioned above, further action should be taken in accordance with the procedure described in Chapters X to XII.

17. Setting aside the orders of penalty

If an appeal or application for revision filed by a Government servant against his conviction in a court higher than the first court of appeal succeeds, the order imposing any penalty which may have been passed on the basis of earlier conviction (vide para 14) should be set aside, if it is decided not to challenge the acquittal in a still higher court. Such penalty should be set aside even in cases where it is decided to start disciplinary proceedings against such a Government servant (vide para 16). Order setting aside the penalty may be made in the standard form. E(22)

18. Withdrawal of prosecution.

18.1. Once a case has been put in a court, it should be allowed to take its normal course. Proposal for withdrawal of prosecution may however, be initiated by the S.P.E. on legal consideration. In such cases the S.P.E. will forward its recommendations to the Department of Personnel and Training in cases in which sanction for prosecution was accorded by that Ministry and to the administrative Ministry concerned in other cases. The authority concerned will in all such cases consult the Ministry of Law and accept their advice. B(40A)

18.2. Requests for withdrawal of prosecution may also come up from the accused. Such requests should not generally be entertained except in very exceptional cases where, for instance, attention is drawn to certain fresh, established or accepted facts which might alter the whole aspect of the case. In such cases also the administrative Ministry concerned should consult the Ministry of Law and accept their advice. B(40A)

18.3. If it is proposed to withdraw any prosecution instituted by or at the instance of the Government of India otherwise than in accordance with the advice of the Ministry of Law the proposal should be placed before the Cabinet in terms of Rule 7 of the Government of India (Transaction of Business) Rules read with item (g) of the Second Schedule to the Rules.

18.4. In all cases covered by paras 18.1., 18.2 and 18.3 in which prosecution was sanctioned on the advice of the Central Vigilance Commission, the Commission should also be consulted before a reference is made to the Ministry of Law.

CHAPTER VIII

ACTION AGAINST TEMPORARY GOVERNMENT SERVANTS

1. Central Civil Services (Temporary Service) Rules, 1965

The conditions of service of temporary Government servants, are, in certain matters, governed by the Central Civil Services (Temporary Service) Rules, 1965. A copy of the Rules is given in Section A(6) In matters pertaining to disciplinary control, the provisions of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, apply to temporary Government servant also. A(6) A(4)

2. Termination of services of temporary Government servants by the appointing authority

A(6)

2.1 Under Rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965, the services of a temporary Government servant, who has not been declared quasi permanent, can be terminated at any time by a month's notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant.

2.2 The services of such a Government servant can also be terminated by the appointing authority forthwith and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the rates at which he was drawing them immediately before the termination of his service, or as the case may be, for the period for which such notice falls short of one month.

2.3 If for any reason it is considered that the services of a Government servant, who had already been served with a notice, should be terminated forthwith, the competent authority may do so and, on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay and allowances for the un-expired period of the notice.

2.4 In case of persons appointed on probation, where in the appointment letter a specific condition regarding termination of service without any notice during or at the end of the period of probation (including extended period, if B(56)

any) has been specifically made, it would be desirable to terminate the services of the person appointed on probation in terms of the letter of appointment and not under Rule 5 (1) of the Temporary Service Rules.

3. Services may be terminated for any reason.

A(6) 3.1 The right to terminate the services of a temporary Government servant under Rule 5 (1) of the Central Civil Services (Temporary Service) rules, 1965, is a condition of service and can be exercised by the competent authority for any good and sufficient reason at his discretion.

3.2 It has often been contended that termination of services of a temporary Government servant is tantamount to dismissal or removal and, therefore, Article 311 (2) is attracted. In Pershotam Lal Dhingra's case (AIR 1958 SC 36 the Supreme Court observed that "…….. misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists under the contract or the rules, to terminate the service the motive operating on the mind of the Government is …... wholly irrelevant". The Court, therefore, held that "If the termination of service is founded on the right flowing from contract or the service rules, then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted.

4. Termination of services for misconduct

As soon as the need for taking action against a temporary Government servant for any reason becomes apparent, the competent authority should, considering the circumstances of each case, decide whether disciplinary proceedings should
A(4) be taken against him under the provisions of the Central Civil Services
A(6) (Classification, Control and Appeal) Rules or whether it would be in the public interest to terminate his services under Rule 5 (1) of the CCS (TS) Rules. In cases where, for example, a minor penalty would be a sufficient punishment, it may be considered appropriate to take disciplinary proceeding against him rather than terminating his services. On the other hand, in a case where gross misconduct has been committed, it may be considered more desirable to take disciplinary action with a view to inflicting the punishment of dismissal or removal than merely to terminate his services which carries no other disability. Termination of services under rule 5 may be resorted to by issuing an order for

discharge simplicitor without making any imputation in the order against the employee when he is found unsuitable for the job.

5. Authority competent to terminate services.

Under Rule 5 (1) the notice of termination of services is to be given by the authority declared for the time being to be the "appointing authority" in respect of the post held by the temporary Government servant concerned. Even if the authority declared as appointing authority at the time of appointment of a person to a particular post was higher in rank than that specified on the date of issue of the notice, the latter authority will still be competent to issue the notice. Termination of services under Rule 5(1) of the CCS (TS) Rules, as explained in para 3.2 above does not amount to "dismissal" or "removal" from service. The provisions of Article 311 (1), according to which a Government servant cannot be dismissed or removed by an authority lower than that by which he was appointed, are not attracted.

6. Termination of services during the pendency of disciplinary proceedings

6.1 *Termination of service after preliminary enquiry* – the Supreme Court in Champakalal Chaman Lal Shah vs. Union of India (AIR 1964 SC 1854) examined the scope of the preliminary enquiry that could be held before the services of a temporary Government servant are terminated or as probationer is discharged. The Supreme Court observed as follows:-

> "Generally, therefore, a preliminary enquiry is usually held to determine whether a prima facie case for a formal departmental enquiry is made out, and it is very necessary that the two should not be confused. Even where Government does not intend to take action by way of punishment against a temporary servant on a report of bad work or misconduct a preliminary enquiry is usually held to satisfy Government that there is reason to dispense with the services of a temporary employee or to revert him to his substantive post, for as we have said already, Government does not usually take action of this kind without any reason. Therefore, when a preliminary enquiry of this nature is held, in the case of a temporary employee or a Government servant holding a higher rank temporarily, it must not be confused with the regular departmental

enquiry (which usually follows such a preliminary enquiry) when the Government decides to frame charges and get a departmental enquiry made in order that one of the three major punishments already indicated may be inflicted on the Government servant. Therefore, so far as the preliminary enquiry is concerned, there is no question of its being governed by Article 311 (2) for that enquiry is really for the satisfaction of Government to decide whether a punitive action should be taken or action should be taken under the contract or the rules in the case of a temporary Government servant or a servant holding higher rank temporarily to which he has no right. In short a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a Government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary under Article 311 for inflicting one of three major punishments mentioned therein. Such a preliminary enquiry may even be held ex-parte for it is merely for the satisfaction of Government, though usually for the sake of fairness, explanation is taken from the servant concerned even at such an enquiry. But at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the Government and it is only when the Government decides to hold a regular departmental enquiry for the purposes of inflicting on the Government servant one of the three major punishments indicated in Article 311 that the Government servant gets the protection of article 311 and all the rights that that protection implies as already indicated above. There must, therefore, be no confusion between the two enquiries and it is only when the Government proceeds to hold a departmental enquiry for the purpose of inflicting on the Government servant one of the three major punishment s indicated in Article 311 that the Government servant is entitled to the protection of that Article. That is why this Court emphasised in Parshotam Lal Dhingra's case and in Shyam Lal vs The State of Uttar Pradesh that the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule is irrelevant."

In this particular case a Memorandum was issued asking Shri Shah why disciplinary action should not be taken against him. But no formal enquiry was held and Shri Shah's service were terminated under Rule 5. The Supreme Court observed:

"We cannot accept the proposition that once Government issues a memorandum like that issued in this case but later decides not to hold a departmental inquiry for taking punitive action, it can never thereafter proceed to take action against a temporary Government servant in terms of Rule 5, even though it is satisfied otherwise that his conduct and work are unsatisfactory."

It will thus be open to the competent authority to terminate the services of the temporary Government servant under Rule 5 or discharge the probationer in terms of his letter of appointment after preliminary enquiry.

6.2 Termination of service during pendency of departmental proceedings

A simple termination of service without inquiry, or even after an informal inquiry to satisfy the Government regarding the suitability or otherwise of the Government servant to continue in service, does not attract. Article 311 (2) unless the order of termination contains some aspersions or stigma. But termination after formal departmental inquiry into specific charges of misconduct and finding of guilt amount to dismissal notwithstanding the fact that the final order is couched in innocuous terms like " termination", "discharge" etc. Such action amounts to circumvention of the protection of Article 311 (2) and a camoflage to conceal the real nature of the action. Thus, if regular disciplinary proceedings are pending against Government servant or he has been informed of the intention to proceed against him departmentally, his services should not be terminated under rule 5 of the CCS (Temporary Service) Rules, 1965.

7. Termination of services of a temporary Government servant being prosecuted in a court of law.

The services of a temporary Government servant against whom prosecution has been launched in a court of law can be terminated during the pendency of criminal case if it is considered expedient or advisable to do so instead of keeping him under suspension till the conclusion of the case. It may, for example, be considered advisable to terminate the services of a temporary Government servant who, if convicted for the offence for which he is being prosecuted, will be unsuitable for further retention in Government service and who

according to legal advice has no chance of acquittal. In such case, the temporary government servant will not be entitled, for the period of suspension, to anything more than the subsistence allowance already paid to him.

8. Forms

The notice of termination of services under Rule 5 (1) of the CCS (TS) Rules should not give any indication of the reasons or circumstances leading to the termination. To ensure the use of correct terminology, the following forms of notice have been prescribed for use as appropriate in the circumstances of each case:-

1. Forms No. E (14 & 15) to be used in cases in which the temporary Government servant is to be given the prescribed notice of termination of services; form No. E(14) being used in cases in which the President is the appointing authority and form No. E(15) in cases in which the appointing authority is an authority other than the President.

2. Forms No. E (16&17) to be used when it is decided to terminate the services of a temporary Government servant forthwith by paying him a sum equivalent to the amount of his pay and allowances for the period of the notice; form No. E(16) being used in cases in which the President is the appointing authority and form No. E(17) being used in cases in which an authority other than the President is the appointing authority.

3. Forms No. E(18) & (19) to be used when the services of a temporary Government servant are to be terminated during the currency of the notice already served on him by paying him the pay and allowances for the unexpired period of the prescribed notice; form No. E(18) being used in cases in which the appointing authority is the President and form No. E(19) being used in cases in which an authority other than the President is the appointing authority.

B(51) **9. Services of Notice**

9.1 The date of issue of notice is not sufficient for calculating the period of notice. The Supreme Court in K.Narasimhiah vs. H.C.Singri Gowdou has observed that "giving" is not equivalent to "sending" and there is no authority or principle for the proposition that as soon as the person with the legal duty to

give the notice despatches the notices to the address of the person to whom it has to be given, the "giving" is complete. In view of this judgement of the Supreme Court, the period of notice should commence from the date the notice is served on, or tendered to the Government servant.

9.2 When the Government servant concerned is on duty, the notice should be served on him as far as possible personally and his acknowledgement obtained. But if he refuses to accept the same, it may be tendered in the presence of some other officer.

9.3 However, in case in which it is not possible to effect such personal service, e.g., when the Government servant is posted at a place other than the head-quarters of the appointing authority or when he is on leave, the notice may be sent by registered post, acknowledgement due. If the notice is received back un-served it shall be published in the Official Gazette and upon such publication, it shall be deemed to have been personally served on such Government servant on the date it was published in the official Gazett. [See Note below Rule 5(1) (a) of the CCS (TS) Rules, 1965]. Alternatively in those cases when it is apprehended that service is likely to be evaded, service should be terminated forthwith with an offer to pay a month's salary in lieu of notice, as provided in the Rules. B(51)

10. Review of cases

10.1 Under Rule 5(2) of the Central Civil Services (Temporary Service) Rules, 1965, the Central Government or any other authority specified by the Central Government in this behalf may reopen, on its own motion, or otherwise a case where a notice is given by the competent authority terminating the services of a temporary Government servant or where the services or any such Government servants are terminated either on the expiry of the period of such notice or forthwith by payment of pay and allowances and for the period of prescribed notice. B(51)

10.2 Except in special circumstances to be recorded in writing, no case under this rule can be reopened after the expiry of three months (i) from the date of notice, in a case where a notice is given; or (ii) from the date of termination of services in a case where no notice is given.

10.3 The authorities which have been declared by the Central Government as competent to exercise the powers conferred by Rule 5(2) of the CCS (TS) rules, 1965, and the extent of their power have been specified in the Ministry of Home Affairs Notification dated 22.7.1965. B(48)

10.4 In cases where the competent authority decides to act under Rule 5(2), it may, after calling for the records and after making such inquiry as it deems fit,

a) confirm the action taken by the appointing authority;
b) withdraw the notice;
c) reinstate the Government in service; or
d) make such other order as it may consider proper.

10.5 In cases where the competent authority confirms the action taken by the appointing authority, no further consequences will follow.

10.6 If the competent authority withdraws the notice, the Government servant will continue in service as if no notice was served upon him.

10.7 If the competent authority decides to reinstate the Government servant, the order of reinstatement should specify :-

i) the amount or proportion of pay and allowances, if any, to be paid to the Government servant for the period of his absence between the date of termination of service and the date of reinstatement;

ii) Whether the said period shall be treated as a period spent on duty for any specified purpose or purposes.

11. Notice of termination of service by a temporary Government servant

11.1 A temporary Government servant can give notice to the appointing authority under Rule 5(1) of the CCS (TS) Rules, 1965 of his intention to terminate his services. B(54)

11.2 If a temporary Government servant submits a letter of resignation in which he does not refer to Rules 5(1) of the CCS (TS) Rules or does not even mention that the letter of resignation be treated as a notice of termination of service, the

provisions of Rule 5(1) ibid will not be attracted and the letter of resignation B(16)
may be dealt with by the competent authority according to the provision of the B(68)
Ministry of Home Affairs O.M. No. 39/6/57-Estt. (A) dated 6.5.1958 read with O.M. No. 39/17/69-Estt. (A) dated 18.6.70, such a temporary Government servant can relinquish his post only when his resignation is accepted and B(54)
he is relieved of his duties.

11.3 But if the letter or notice given by the Government servant refers directly or indirectly to rule 5(1) of the CCS (TS) Rules or even if it merely says that it may be treated as a notice of termination of services, such a letter may be treated as a valid notice under Rule 5(1). There is no question of the appointing authority refusing to accept such a notice as the Government servant will automatically cease to be a Government servant on the expiry the notice.

11.4 If the temporary Government servant who gives notice under Rule 5(1) and makes a request that he should be relieved from duties earlier than the expiry of period of notice, it may be examined whether the temporary Government servant concerned can be relieved earlier without detriment to work. If the work does not suffer in any way, such a Government servant may be relieved earlier.

11.5 If a temporary Government servant absents himself from duty without leave after giving notice and before the expiry of the period of notice, the competent authority can take disciplinary action against him, if considered necessary.

11.6 If the temporary Government servant who gives notices of the termination of his service under rule 5(1) of the CCS (TS) Rules, is one against whom disciplinary proceedings are pending, the proceedings will lapse on the expiry of the period of notice unless final orders on the proceedings have been passed before then.

11.7 If the temporary Government servant giving a notice is one who is under suspension, he need be paid only the subsistence allowance for the period of notice. The order placing such a Government servant under suspension will lapse on the expiry of notice of termination.

11.8 If the temporary Government servant who gives notice is one who is alleged to have committed a criminal offence for which it is proposed to pros-

ecute him, he can be prosecuted even after the termination of services. If the notice is given by a Government servant during the pendency of prosecution against him in a court of law, prosecution will continue even after the termination of service.

C(25) **12. Circulation of names of temporary Government servant whose services have been terminated under Rule 5(1).**

12.1 The names and service particular or even mere names of temporary Government servants whose services are terminated under Rule 5(1) of the CCS (TS) Rules, 1965, even when disciplinary proceedings were contemplated or pending against them, or of those who leave Government service after giving due notice under Rule 5(1) of the CCS (TS) Rules, should not be circulated either directly or through the police. The result of such circulation will, in effect, be to disqualify them from further government service which would be tantamount to imposing a penalty of dismissal or removal under the guise of
C(25) an innocuous circular and would be struck down by courts as violative or Article 16 (1) and Article 311 of the Constitution.

12.2 As safeguard against the re-entry of such persons into Government service, the standard form of verification of character and antecedents which is required to be filled in by every fresh entrant to Government service provides for a column in which information about past service, if any, and the reasons for termination of service, resignation, etc. is to be given. Any suppression of such information by an entrant to Government service will itself be a good and sufficient reason for taking disciplinary action against him.

CHAPTER IX
CONSTITUTIONAL PROVISIONS

1. General

Public servants have got a special relationship with their employer, viz. the Government which is in some aspects different from the relationship under the ordinary law, between the master and servant. It will, therefore, be appropriate to describe briefly the basic provisions of the Constitution pertaining to services. The Chief Vigilance Officers and officers handling vigilance cases will need to bear them in mind while processing disciplinary cases against Government servants.

2. Power to make rules governing conditions of service

2.1. Article 309 of the Constitution reads as follows:-

> "309. Recruitment and conditions of service of person serving the Union or a State-Subject to the provisions of this Constitution, Act of the appropriate Legislature may regulate the recruitment, and conditions of service of person appointed to public services and posts in connection with the affairs of the Union or of any State:
>
> Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of the State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act".

2.2. The above Article empowers the Parliament to make laws to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union. It also authorities the President to make rules for the above purposes until provision in that behalf is made by or under an Act of Parliament.

2.3. Parliament has not so far passed any law on the subject. Recruitment and the conditions of service of Central Government servants in general continue to be governed by rules made by the President under Article 309. The rules made under the Article which are relevant for the present purpose are :-

i) The C.C.S. (Conduct) Rules, 1964.
ii) The C.C.S. (C.C.A.) Rules, 1965.
iii) The Railway (D.&A.) Rules, 1968.
iv) The C.C.S. (T.S.) rules, 1965.

3. Special provisions relating to certain categories of Government servants.

3.1. The Constitution also makes special provision relating to conditions of service of certain categories of public services. The more important of these are given below.

3.2. All India Services - Under Article 312 of the Constitution, Parliament has enacted the All India Services Act, 1951. Under Sec. 3 of that Act, the President has framed rules regulating various aspects of conditions of services of persons appointed to the All India Services. The three All India Services created so far are the I.A.S., the I.P.S. and the Indian Forest Service.

3.3. Secretariat staff of the Parliament - Article 98 of the Constitution

empowers the Parliament to regulate by law the recruitment and conditions of service of person appointed to the secretarial staff of either House of Parliament. However, as no such law has yet been made by the Parliament, the recruitment to the Secretariats of the Lok Sabha and the Rajya Sabha and the conditions of service of the staff of the two Houses are regulated by the rules made by the President under Article 98 (2) of the Constitution in consultation with the Speaker of the Lok Sabha and the Chairman of the Rajya Sabha respectively.

3.4. Officers of the Supreme Court - Under Article 146 (2) of the Constitution, conditions of service of officers and servants of the Supreme Court are regulated by rules made by the Chief Justice subject to the approval of the President in certain matters.

3.5. Indian Audit and Accounts Department - Under Article 148 (5) the conditions of service of persons serving in the Indian Audit and Accounts Departments are regulated by rules made by President after consultation with the Comptroller and Auditor General of India. No separate rules have been made by the President under this Article. The rules framed by the President for the other civil services and posts are made applicable to persons serving in the Indian Audit and Accounts Department after consultation with the Comptroller and Auditor General of India.

3.6. Defence personnel - The conditions of service of the Defence personnel paid out of the Defence Services Estimates and who are subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950) are governed by their respective Acts and the rules made thereunder.

4. Persons engaged on special contract

On occasions the Government engages the services of specialists or experts or other persons for a specified period on special contract of

service. Such contract would normally provide inter alia for the duration of appointment and for conditions regarding termination of service. In some cases the contact may expressly provide that in certain specified matters the conditions of service of the person appointed on contract will be governed by spefic rules governing Government servants in these matters. In certain other cases the rules governing the conditions of service of Government servant may be made applicable to a person appointed on a contract by a general reference to them.

5. Alterations in conditions of service

5.1. Except in the case of appointments made on a specific contract, the relationship between the Government and the Government servant is not based on a contract. The conditions of service to which a Government servant is subject cannot be deemed to constitute the terms of a contract (S. Framji Vs. Union of India, AIR 1960 Bomb. 14 and Fakir Chand Vs. Chakravarti, AIR 1954 Cal. 566). The essential requirement of a contract is agreement between the contracting parties in respect of the terms of the contract. In the case of a Government servant there is no such agreement. The legal relationship between the Government and Government servant has been defined by the courts as something analogous to status, the duties and obligations of which are fixed by law and are quite independent of the will of the person affected.

5.2. The power to make rules conferred by Article 309 of the Constitution or by other statutes includes the power to add, amend or alter the rules by virtue of Article 367 of the Constitution and Section 21 of the General Clauses Act, 1897. Accordingly, so long as the Constitutional provision are not contravened, the rules governing the conditions of service of Government servants can be altered or amend by the Government from time to time according to the exigencies of the public service without the consent of a Government servant concerned who will be bound by such

amendment or alteration in the rules. The Privy Council in Venkata Rao's case (AIR 1937 P.C. 27) observed that rules which are manifold in numbers and most minute in particularity are all capable of change from time to time. The Supreme Court also in Grewal's case (A.I.R. 1959 S.C. 512) observed that numerous rules relating to conditions of service may have to be changed from time to time if the exigencies of public service so require. There is no question of consent of the Government servant concerned at least by reason of the sheer impossibility of securing such consent from every one. It is also open to the Government to alter service rules retrospectively which may affect even the existing incumbents adversely. However, the existing incumbents are generally given protection with a view to avoiding hardship to them. The rights accruing to a Government servant under the conditions of service in force at the time of his retirement cannot be taken away after his retirement.

6. Alternations in the conditions of service of persons appointed on contract.

A unilateral amendment or alteration of specified conditions of service embodied in a contract of service is not permissible (Jogesh Vs. Union of India I.L.R. 1954 - 56 Assam 383). However, any rules relating to conditions of service of Government servants which are made applicable to a person appointed on contract by a general reference to them in the contact can be changed unilaterally.

7. Employees of departmental public sector undertakings

Certain undertakings are run and managed by Government departmentally e.g., ordnance factories under the Ministry of Defence, workshops of the P&T Department, workshops under the Railways, Delhi Milk Scheme, etc. Employees of such undertakings are appointed

and paid by Government and they are Government servants for all purposes and will be governed by the normal rules and regulations applicable to Government servants. However, provisions of the Factories Act and of the Labour Laws will also apply to them to the extent the employees of such establishments are covered by such laws.

8. Employees of public sector undertakings

The employees of public sector undertakings which have been constituted as corporate bodies and constitute separate legal entities under the relevant statutes or which have been registered as companies under the Companies Act are not Government servants. They are governed by rules and regulations made by the respective undertakings under the powers vesting in them under the relevant statutes/Articles of Memorandum. Government servants who may be employed under such undertakings on foreign service terms continue, for purpose of disciplinary action, to be governed by Government rules and regulations.

9. Tenure of service

A basic feature of the employer - employee relationship is the mater's power to terminate the services of the servant. The extent of this power, however, varies with different categories of employment. For most categories of employees laws and regulations exist regulating the right of the employer in this behalf. In respect of Government servants the Constitution itself makes certain specific provisions.

10. **Article 310 of the Constitution (Doctrine of pleasure)**

Article 310 of the Constitution reads as follows:-

"310. Tenure of office of persons serving the Union or a State: - (1) Except as expressly provided by this Constitution, every

person who is a member of a defence service or of a civil service of the Union or of an All India Service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be of the Governor of the State, any contract under which a person, not being a member of a defence service or of an All-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate the post".

10.2. The above Article provides that a Central Government servant holds office during the pleasure of the President and therefore his tenure could be terminated by the President at pleasure. Practically, all Government servants, both on the civil and on the defence side, are covered by this Article.

10.3. the exercise of the pleasure is, however, subject to the express provisions of the Constitution made in relation to certain special services and posts and to the provisions of Article 311 which lays down, in relation to holders of posts covered by that Article, the manner in which the

services of a Government servant could be terminated. In that sense the requirements of Article 311 are of the nature of a proviso to Article 310. The exercise of pleasure by the President under Article 310 is thus controlled and regulated by the provisions of Article 311 (A.I.R. 1958 S.C. 36).

11. Article 311 of the Constitution

11.1. Article 311 of the Constitution reads as follows:-

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State - (1) 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 posts under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply:-

a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

b) Where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

c) Where the President or Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final".

11.2. The procedure laid down in Article 311 is intended to assure, first, a measure of security of tenure to Government servants who are covered by the Article, and secondly, to provide certain safeguards against the arbitrary dismissal or removal of Government servant or reduction to a lower rank. The provisions, being constitutional, are capable of being enforced in a court of law. Where in any case there is an infringement of Article 311, the orders passed by the disciplinary authority are void ab initio and in the eyes of law 'no more than a piece of waste paper' and the Government servant will be deemed to have continued in service, or in the case of reduction in rank in his previous post throughout.

11.3. The implications of the provisions of Article 311 have been the subject of a close examination by several High Courts and by the Supreme Court. In particular in the cases of Parshotam Lal Dhingra and Khem Chand, the observations made by the Supreme Court give an exhaustive interpretation of the various aspects involved and provide the administrative authorities authoritative guidelines in dealing with disciplinary cases.

11.4. The Supreme Court in the case of Tulsi Ram Patel and other (decided on 11.07.1985) has defined the principles to be kept in view by the competent authority while taking action under the second proviso to Art. 311 (2) or corresponding service rules as under:-

(a) When action is taken under clause (a) of the second proviso to Art. 311 (2) of the Constitution or rule 19(i) of the CCS (CC&A) Rules, 1965 or any other service rule similar to it, the first pre-requisite is that the disciplinary authority should be aware that a government servant has been convicted on a criminal charge. But this awareness alone will not suffice. Having come to know of the conviction of a government servant on a criminal charge, the disciplinary authority must consider whether his conduct, which had led to his conviction, was such as warrants the imposition of a penalty and if so what that penalty should be. For that purpose, it will have to peruse the judgement of the criminal courts and consider all the facts and circumstances of the case. In considering the matter, the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features. This, however, has to be done by the disciplinary authority by itself. Once the disciplinary authority reaches the conclusion that the government servant's conduct was blameworthy and punishable, it must decide upon the penalty that should be imposed on the government servant. This too has to be done by the disciplinary authority by itself. The principle, however, to be kept in mind is that the penalty imposed upon the civil servant should not be grossly excessive or out of all proportion to the offence committed or one not warranted by the facts and circumstances of the case.

(b) When action is taken under clause (b) of the second provision to Art. 311 (2), there are two conditions precedent which must be satisfied before action under this clause is taken against a government servant. These conditions are :-

i) There must exist a situation which makes the holding of an inquiry contemplated by Art. 311 (2) not reasonable practicable. What is required is that holding of 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 all the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be :-

a) Where a civil servant, through or together with his associates, terrorizes, threatens or intimidates witnesses who are likely to give evidence against him with fear of reprisal in order to prevent them from doing so; or

b) Where the civil servant by himself or with or through other threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that the officer is afraid to hold the inquiry or direct it to be held; or

c) Where an atmosphere of violence or of general indiscipline and insubordination prevails at the time the attempt to hold the inquiry is made.

The disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the civil servant is weak and is, therefore, bound to fail.

ii) Another important condition precedent to the application of clause (b) of the second provisio to Art. 311 (2), or rule 19 (ii) of the CCS (CC&A) Rules, 1965 or any other similar

rule is that the disciplinary authority should record in writing the reason or reasons for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Art. 311 (2) or corresponding provisions in the service rules. This is a constitutional obligation and, if the reasons are not recorded in writing, the order dispensing with the inquiry and the order of penalty following it would both be void and unconstitutional. It should also be kept in mind that the recording in writing of the reasons for dispensing with the inquiry must precede an order imposing the penalty. Despite the legal position that the reasons for dispensing with the inquiry need not find a place in the final order itself yet it would be of advantage to incorporate briefly, the reasons which led the disciplinary authority to the conclusion that it was not reasonably practicable to hold an inquiry, in the order or penalty. While the reasons so given may be brief, they should not be vague or there should not be just a repetition of the language of the relevant rules.

c) As regards action under clause (c) of the second provision to Art. 311 (2) of the Constitution, what is required under this clause is the satisfaction of the President or the governor, as the case may be, that in the interest of the security of the State, it is not expedient to hold an inquiry as contemplated by Art. 311 (2). This satisfaction is of the President or the Governor as a constitutional authority arrived at with the aid and advice of his Council of Ministries. The satisfaction so reached by the President or the Governor is necessarily a subjective satisfaction. The reasons for this satisfaction need not be recorded in the order of dismissal, removal or reduction in rank; not can it be made public. There is no provision for departmental appeal or other departmental remedy against the satisfaction reached by the President or

the Governor. If, however, the inquiry has been dispensed with by the President or the Governor and the order of penalty has been passed by disciplinary authority subordinate there-to, a departmental appeal or revision will lie. In such an appeal or revision, the civil servant can ask for an inquiry to be held into his alleged conduct, unless at the time of the hearing of the appeal or revision a situation envisaged by the second provisio to Article 311 (2) is prevailing. Even in such a situation the hearing of the appeal or revision application should be postponed for a reasonable length of time for the situation to become normal. Ordinarily the satisfaction reached by the President or the Governor, would not be a matter for judicial review. However, if it is alleged that the satisfaction of the President or Governor, as the case may be had been reached malafide or was based on wholly extraneous or irrelevant grounds, the matter will become subject to judicial review because, in such a case, there would be no satisfaction, in law, of the President or the Governor at all. The question whether the court may compel the Government to disclose the materials to examine whether the satisfaction was arrived at malafide or based on extraneous or irrelevant grounds would depend upon the nature of the documents in question i.e. whether they fall within the class of privileged documents or whether in respect of them privilege has been properly claimed or not.

12. Dismissal, removal and reduction in rank.

12.1 It is well understood that the three terms 'dismissal', 'removal' and 'reduction in rank' used in the context of disciplinary proceedings have acquired a special connotation as signifying the three major punishments which can be inflicted upon Government servants under the CCS (CCA) Rules 1965 or under other corresponding service rules in accordance

with the procedure prescribed in these rules. The Constitution uses them in that sense. 'Dismissal' and 'removal' amount to a premature termination of the service of a Government servant as a measure of penalty. The distinction between the two lies in that whereas in the case of removal, a person remains eligible for re-appointment under Government, in the case of dismissal, he will not ordinarily be so eligible. Except for that difference, both dismissal and removal cast a stigma on the Government servant and imply that his services have been terminated owing to some misconduct or misbehavior. The term 'reduction in rank' denotes reduction to a lower post or a lower time-scale of pay or to a lower stage in a time-scale. A change of position in the seniority list of a cadre, however, will not amount to reduction in rank.

13. When 'termination of service' will amount to punishment of dismissal or removal

13.1 Whether termination of service of a Government servant in any given circumstance will amount to punishment will depend upon whether under the terms and conditions governing his appointment to a post he had a right to hold the post but for termination of his service. If he has such a right, then the termination of his service will, by itself, be a punishment for it will operate as a forfeiture of his right to hold the post. But if the Government servant has no right to hold the post the termination of his employment or his reversion to a lower post will not deprive him of any right and will not, therefore, by itself be a punishment.

13.2 If the Government servant is a temporary on and has no right to hold the post, dismissal or removal will amount to punishment if such a Government servant has been visited with certain evil consequences. In such a case the termination of his services will not be under the Temporary Service Rules but after observing the procedure laid down in the CCS (CCA) Rules, 1965 or under

other corresponding Service Rules. (See also Chapter VIII).

14. Permanent Government employees

Where a person is appointed substantively to a post in Government service he normally acquires a right to hold the post until, under the rules he attains the age of superannuation or is retired in public interest after he has attained the age of 50 or 55 years as the case may be, under F.R. 56 (j). He cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or of other disqualification and appropriate proceedings are taken under the relevant service rules read with Article 311. Termination of services of such a Government servant on grounds of misconduct, negligence, inefficiency, or other disqualification will amount to a punishment which can be imposed only in accordance with the procedure laid down in the relevant rules as this will operate as a forfeiture of his right to hold the post by bringing about a premature end of his employment.

15. Temporary Government employees

15.1 A temporary Government employee is subject to the CCS (TS) Rules, 1965 Rule 5 (1) of which provides that the services of a temporary Government servant can be terminated at any time by a month's notice in writing given either by the Government servant to the competent authority or by the competent authority to the Government servant. A person in temporary service thus has no substantive right to hold the post and his service can be terminated in accordance with Rule 5 (1) of CCS (TS) Rules, 1965 by giving him the prescribed notice. A termination of service brought about by the exercise of a contractual right does not amount to a dismissal or removal to attract the application of Article 311. Even if misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influenced the Government to take action under the terms of contract of employment or under specific

service rules, nevertheless, if a right exists under the contract or under the rules, to terminate the services, the motive operating on the mind of the Government is wholly irrelevant. In Dhingra's case (AIR 1958 SC 36) the Supreme Court held that :

> "Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal as has been held by this Court in Satish Chandra Anand vs. Union of India. Likewise, the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Article 311 (2) as has also been held by this Court in Shyam Lal vs. State of U.P. In either of the two above mentioned cases the termination of the service did not carry with it the penal consequences of loss of pay or allowances under F.R. 52. It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influence the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules to terminate the service the motive operating on the mind of the Government is, as Chagla, C.J., has said in Shrinivas Ganesh vs. Union of India, wholly irrelevant. In short, if the termination is founded on the right flowing from contract or the service Rules, then, prima facie, the termination is not a punishment and carried with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other

disqualification, then it is a punishment and the requirement of Article 311 must be complied with. As already stated, if the servant has got a right to continue in the post, unless the the contract of employment or the rule provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Article 311, for it operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances. It puts an indelible stigma on the officer affecting his further career".

15.2 An appointment to a temporary post for a specified period however, gives the Government servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be terminated during that period unless he is, by way of punishment, dismissed or removed from service.

16. Quasi-permanent employees

The services of a person who having been appointed temporarily to a post has been in continuous service for more than three years and in respect of whom a certificate of quasi-permanency under Rule 3 of the CCS (Temporary Service) Rules, 1965 has been issued, can be terminated only in the circumstances and in the manner in which the employment of a Government servant in permanent service can be terminated or when the appointing authority certifies that a reduction has occurred in the number of posts available for Government servants not in permanent services. Such a Government servant acquires a right to the post and, therefore the termination of his employment, otherwise than in accordance with Rule 7 of the CCS (TS) Rules, will deprive him of his right to that post which he has acquired under the rules and will prima facie be a punishment and regarded as a dismissal or removal from A(6)

service so as to attract the provisions of Article 311.

17. Discharge of probationer/person on probation

17.1 A probationer does not have a substantive right to hold the post. He is appointed on trial. His appointment can be terminated during or at the end of the probation, if he is found unsuitable, by notice or otherwise as provided in the terms of his appointment. If a Government servant had held another post under government before his appointment to the post in question on probation, he will revert to the post on which he held a lien.

17.2 In Dhingra's case (AIR 1958 SC 36) the Supreme Court has enunciated the position in regard to probationers thus :-

1) Appointment to a post on probation gives to the person so appointed no right to the post and his services may be terminated without taking recourse to procedure laid down in the relevant rules for dismissing or removing a public servant from service.

2) The termination of employment of a person holding a post on probation without any inquiry whatsoever cannot be said to deprive him of any right to the post and is, therefore, no punishment.

3) If instead of terminating the services of such a person without any inquiry, the employer chooses to hold an inquiry into his alleged misconduct, or inefficiency or for some similar reason and if the probationer is discharged on any one of those grounds without a proper inquiry and without his getting a reasonable opportunity of showing cause against his discharge, it will amount to dismissal or removal from service within the meaning of Article 311 (2) of the Constitution and will, therefore, be liable to be struck down.

4) If the employer simply terminates the services of a probationer, without holding an inquiry and without even giving him a chance of showing cause against his removal from service, the probationary civil servant will have no cause of action even though the real motive behind the removal from service may have been that his employer thought him to be unsuitable for the post he was holding on probation on account of his misconduct or inefficiency, or some such cause.

18. Officiating appointment

18.1 The appointment of a person to officiate in a post is usually made when the substantive incumbent of the post is on leave or has been appointed or transferred temporarily to another post, pending the return of the substantive incumbent. Officiating appointment may also be made in an existing or newly created permanent or temporary post. The reversion of such an officiating Government servant to the post on which he holds a lien or to the post held by him before will not attract Article 311 as he had no right to the post and his reversion cannot be treated as a punishment.

18.2 This aspect was clarified by the Supreme Court in the case of an Inspector of Police who was holding the post of Deputy Superientendent in an officiating capacity but was subsequently reverted. It appeared that there were certain allegations of corruption against the officer and an inquiry was held. The order was a simple one which did not give any reason or refer to any misconduct. The order was challenged on the ground that the reversion was really meant as a penalty. The Supreme Court rejected the contention and held that his reversion was not bad in law as motive was not relevant.

(State of Maharashtra vs. Abraham, Civil Appeal No. 69 of 1961).

19. Reduction in Rank

In Dhingra's case which actually dealt with a case of reversion to a lower rank, the Supreme Court had, on this matter, held as follows:-

> "A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the Government servant ha s a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank, to his substantive lower rank will not ordinarily be a punishment"

20. Services covered by Article 311

Clause (1) of Article 311 clearly limits the application of the provisions of the Article to members of Civil Services of the Union or of All India Services or Civil Services of the States or holders of civil posts under the Union or a State. It does not cover members of the Defense Services or those holding posts connected with the defense including civilian personnel working on posts connected with defence and paid from Defence Estimates. [It may, however, be noted that civil Government servants in defence services have been brought under the purview of the Central Civil Services (Classification, Control and Appeal) Rules, 1965]. Employees of public undertaking or of independent corporate bodies are not holders of civil posts and are not covered by Article 311 except Government servants who are on deputation to such undertakings or corporate bodies.

21. Authority competent to dismiss or remove under Article 311(1)

21.1 Clause (1) of Article 311 provides that no person who is a member

of a civil service of the Union or an All India Service or holds a civil post under the Union shall be dismissed or removed by an authority subordinate to that by which he was appointed. The appointing authority cannot delegate his power of dismissal and removal to a subordinate authority.

21.2 If in a particular case a Government servant was appointed by a higher authority than the one which was competent to make appointment to the post or a Government servant was appointed by a particular authority but subsequently the power to make appointment to that post or grade was delegated to lower authority and if such a Government servant is dismissed or removed from service by the lower authority, which though no doubt, competent under the rules to order the appointment and also to order dismissal is lower in rank than the authority which had in fact ordered his appointment, such an order of dismissal or removal would contravene the provisions of Article 311 (1) of the Constitution. Often time it does happen that an authority higher in rank than the competent authority will make an appointment in any individual case. However, if such an appointment has been ordered by the higher authority in respect of the persons so appointed, it is only that higher authority that can exercise the power of ordering his removal or dismissal from service.

21.3 The underlying idea is that a Government servant to whom Article 311 applies is entitled to the judgement of the authority by whom he had been appointed or of an authority superior to that authority and that he should not be dismissed or removed by a lower authority in whose judgement he may not have the same faith. The provisions of this article will apply to dismissal or removal, whether in a disciplinary case or on account of conviction of a Government servant in a court of law3 or on any other ground. In all cases of removal or dismissal the order should be signed by the authority which had appointed him.

21.4 In the case of appointments made on the basis of selection, that authority which makes the actual appointment and not that which made authority or a head of the department may have approved a selection list or direct a subordinate authority to appoint a particular person. In either case the higher authority does not become the appointing authority. But if a Government servant is appointed by one authority in a temporary capacity and is confirmed by a higher authority, the competent authority to order dismissal or removal will be the higher authority which confirmed the Government servant and not the authority which actually appointed him.

21.5 If An order of dismissal/removal is passed by an authority subordinate to the appointing authority, any subsequent confirmation of such order by the competent authority will not validate the defective order. In such a case the competent disciplinary authority should start fresh proceedings if the circumstances of the case so warrant.

22. Reasonable opportunity or natural justice.

22.1 The substantive part of clause (2) of Article 311 provides that " no such person as aforesaid shall be dismissed or removed or reduced in rank, except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges". What constitutes 'reasonable opportunity' has been considered by Higher Courts and the Supreme Court on a number of occasions. According to the prescribed procedures, the disciplinary authority should hold an inquiry, hear and weigh the evidence and consider the merits of the case before coming to conclusion. These constitute elements of a judicial approach and, therefore, in discharging its functions in disciplinary inquiries, the disciplinary authority acts in a quasi-judicial capacity. As a corollary, the requirements of "reasonable opportunity" have been equated with the principles of natural justice (Joseph John's case, A.I.R. 1955 S.C. 160). Courts have freely applied

these principles to departmental inquires and disciplinary proceedings against Government servants.

22.2 It has been held that for a proper compliance with the requirement of 'reasonable opportunity', as envisaged in Article 311 (2), a Government servant against whom action is proposed to be taken should, in the first instance be given an opportunity to deny the charge and to establish his innocence. The Supreme Court of India in the case of Union of India and others vs. Mohd. Ramzan Khan - 1991 (1) SLR 159 has held that even though the second stage of the inquiry in Article 311 (2) has been abolished by 42nd amendment to the Constitution the delinquent is still entitled to represent against the conclusion of the Inquiry Officer, holding that the charges or some of the charges are established. It has thus been laid down that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with the proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.

(Before the 42nd Amendment to the Constitution, it was necessary that such a person should be given an opportunity to represent, if he so desires, against the quantum of punishment proposed to be inflicted on him. This opportunity at the second stage has been now done away with by the aforesaid amendment to the Constitution).

22.3 In Khem Chand vs. Union of India (AIR 1958 SC 300), the Supreme Court explained the nature and scope of "reasonable opportunity" in the following terms:-

"It is true that the provision does not in terms refer to different

stages at which opportunity is to be given to the officer concerned. All that it says is that the Government servant must be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. He must not only be given an opportunity but such opportunity must be a reasonable one. In order that the opportunity to show cause against the porposed action may be regarded as a reasonable one, it is quite obviously necessary that the Government servant should have the opportunity to say, if that be his case, that he has not been guilty of any misconduct to merit any punishment at all and also that the particular punishment proposed to be given is much more drastic and severe than he deserves. Both those pleas have a direct bearing on the question of punishment and may well be put forward in showing cause against the proposed punishment. If this is the correct meaning of this clause, as we thing it is, what consequences follow? If it is open to the Government servant under the provision to contend if that be the fact that he is not guilty of any misconduct, then how can he take the plea unless he is told what misconduct is alleged against him? If the opportunity to show cause is to be a reasonable one it is clear that he should be informed about the charge or charges levelled against him and the evidence by which it is sought to be established, for its is only then that he will be able to put forward the defence. If the purpose of these provisions is to give Government servant an opportunity to exonerate himself from the charge and if this opportunity is to be a reasonable one he should be allowed to show that the evidence against him is not worthy of credence or consideration and that he can only do if he is given a chance to cross-examine the witnesses called against him and to examine himself for any other witnesses in support of his defence. All this appears to us to be implicit in the language used in the clause, but this does not exhaust his rights. In addition to showing that he has not been guilty of any misconduct so as to merit any punishment it is reasonable that he should also have an

opportunity to contend that the charges proved against him do not necessarily require the particular punishment proposed to be meted out to him. He may say, for instance, that although he has been guilty of some misconduct it is not of such a character as to merit the extreme punishment of dismissal or even of removal or reduction in rank and that any of the lesser punishments ought to be sufficient in his case."

To summarise; the reasonable opportunity envisaged by the provision under consideration includes :-

a) an opportunity to deny his guilt and establish his innocence, which he can only do if he told what the charges levelled against him are and the allegations on which such charges are based;

b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally;

c) an opportunity to make his representation as to or why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the inquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant tentatively, proposes to inflict one of three punishments and communicates the same to the Government servant."

NOTE— Clause (c) is no longer operative under the amended provisions of Article 311 (2) of the Constitution amended vide 42nd Amendment.

22.4. The Supreme Court in Union of India vs. Verma (AIR 1957 SC 882) has summarised the principles of natural justice thus :-

"Stating it broadlfy 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 witness examined by that party, and that no material should be relied on against him without his being given an opportunity of explaining them."

Hence the rules of natural justice are violated :-

a) Where the inquiry is confidential and is held ex-parte, or the witnesses are examined in the absence of accused officer.

b) Where the accused officer is denied the right to call material defense witnesses, or to cross-examine the prosecution witnesses, or he is not given sufficient time to answer the charges, or the Inquiring Authority acts upon documents not disclosed to the accused officer.

c) Where the Inquiry Officer has a personal bias against the person charged.

23. Exceptions to Article 311 (2)

23.1 The provision to Article 311 (2) provides for certain circumstances in which the procedure envisaged in the substantive part of the clause need not be followed. These are set out below.

23.2 *Conviction on a criminal charge.* - One of the circumstances excepted by clause (a) of the provision is when a person is dismissed or removed or reduced in rank on the ground of conduct which has laid to his conviction on a criminal charge. The rationale behind this exception is that a formal inquiry is not necessary in a case in which a court of law has already given a verdict. However, if a conviction is set aside or

quashed by a higher court on appeal, the Government servant will be deemed not to have been convicted at all. Then the Government servant will be treated as if he had not been convicted at all and as if the order of dismissal was never in existence. In such a case the Government servant will also be entitled to claim salary for the intervening period during which the dismissal order was in force. The claim for such arrears of salary will arise only on reinstatement and therefore the period of limitation under clause 102 of the Limitation Act would apply only with reference to that date (Union of India vs. Akbar Sheriff). The grounds of conduct for which action could be taken under this proviso could relate to a conviction on a criminal charge before appointment to Government service of the person concerned. If the appointing authority were aware of the conviction before he was appointed, it might well be expected to refuse to appoint such a person but if for some reason the fact of conviction did not become known till after his appointment, the person concerned could be discharged from service on the basis of his conviction under clause (a) of the proviso without following the normal procedure envisaged in Article 311.

23.3 *Impracticability* - Clause (b) of the proviso provides that where the appropriate disciplinary authority is satisfied, for reasons to be recorded by that authority in writing that it does not consider it reasonably practicable to give to the person an opportunity of showing cause, no such opportunity need be given. The satisfaction under this clause has to be of the disciplinary authority who has the power to dismiss, remove or reduce the Government servant in rank. As a check against an arbitrary use of this exception, it has been provided that the reasons for which the competent authority decides to do away with the prescribed procedures must be recorded in writing setting out why it would not be practicable to give the accused an opportunity. The use of this exception could be made in case, where, for example a person concerned has absconded or where, for other reasons, it is impracticable to communicate with him.

23.4 Reasons of security - Under proviso (c) to Article 311 (2), where

the President is satisfied that the retention of a person in public service is prejudicial to the security of the State, his services can be terminated without recourse to the normal procedure prescribed in Article 311 (2). The satisfaction referred to in the proviso is the subjective satisfaction of the President about the expediency of not giving an opportunity to the employee concerned in the interest of the security of the State. This clause does not require that reasons for the satisfaction should be recorded in writing. That indicates that the power given to the President is unfettered and cannot be made a justifiable issue, as that would amount to substituting the satisfaction of the court in place of the satisfaction of the President. If however, the inquiry has been dispensed with by the President and the order of penalty has been passed by disciplinary authority subordinate thereto, a departmental appeal or revision will lie as stated in para 11.4 of this Chapter.

24. Summary of principles laid down by courts

A summary of the principles laid down in the various decision of the Supreme Court on service matters is given below:-

(1) Arts. 310 and 311 apply to all Government servants whether permament, temporary, officiating or on probation (Dhingra's case).

(2) Art.311(1) and (2) is a proviso to Art. 310(1) (Dhingra's case).

(3) The words "dismissed", "removed" or "reduced in rank" have a special meaning, namely, the meaning which they bore as three major punshments in service rules, the difference between dismissal and removal being that dismissal ordinarily disqualifies for future employment and removal ordinarily does not [Satish Chandra's case, (1953

SCR 655); Shyam Lal's Case, (1955 SCR 26); Dhingra's Case, (AIR 1958 SC 36) and Khem Chand's Case (AIR 1958 SC 300)].

(4) The right of a person to hold a substantive post till he attains the age of superannuation or is compulsorily rtired is subject to a contract, express or implied, or to a service rule providing for its earlier termination (Dhingra's Case) and the same is true of a temporary post (Satish Chandra's Case, Hartwell Prescott Singh's Case. 1958 SCR 509, Balakotiah's Case, 1958, SCR 1052; and Dalip Singh's Case (1961 SCR 68).

(5) The termination of service brought about otherwise than by way of punishment is not dismissal or removal within the meaning of Art. 311(2) (Satish Chandra's Case and Dhingra's Case). Dismisal or removal involves some imputation or charge against the officer which he can meet or controvert (Shyam Lal's Case).

(6) If the Government has by contract, express or implied, or under the rules, the right to terminate the employment at any tiem, then such termination in the matter provided by the contract or the rules is prima facie and per se not punishment and does not attract the provisions of Art. 311 (Dhingra's Case and Shyam Lal's Case).

(7) In principle, there is no distinction between the termination of service of a person under the terms of a contract governing him and the termination of his service in accordance with the terms of his conditions of service (Hartwell Prescott Singh's Case).

(8) Even if the Government have the right under a contract or a

rule to terminate the contract of service, the Government is not obliged or bound to exercise such right if it is of opinion that the conduct of the servant call for punishment; it may then dismiss or remove him but this can only be done by complying with the requirement of Art. 311 (2) (Dhingra's Case and Union of India Vs. Jeewan Ram, 1958, ASC 905).

(9) In the absence of a contract, express or implied, or a service rule, the termination of service before the age of superannuation, or before compulsory retirement as permissible under the rules, or before the period fixed for temporary service has expired, is per se a punishment because it operates as a forfeiture of the servant's rights and brings about a premature termination of his employment (Dhingra's Case).

(10) Whether a servant is 'punished' is to be found by applying one of the two following tests; (a) has the person been deprived of a right to hold the post? (b) has he been visited by any penal consequences, as for instance, a stigma on his name for misconduct or incompetency, or has he suffered a forfeiture of salary pension or other benefits? (Dhingra's case).

(11) Wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter [Union of India and others Vs. Mohd. Ramzan Kahn 1991 (1) SCR 159].

CHAPTER X

DISCIPLINARY PROCEEDINGS I

INITIAL ACTION

1. Disciplinary Rules

1.1. The disciplinary penal provisions and procedures for departmental disciplinary proceedings have been laid down in different sets of rules applicable to different categories of Government servants. The rules having the widest applicability are the Central Civil Services (Classification, Control & Appeal)Rules, 1965, hereafter referred to as Classification, Control & Appeal Rules, which apply to all civil Government servants including the civilian Government servants in the Defence services, except.

A(4)

a) Railway servants, as defined in Rule 102 of the Indian Railway Establishment Code (Vol.I).

b) Members of the All India Services;

c) Persons in casual employment;

d) Persons subject to discharge from service on less than one month's notice;

e) Persons for whom special provisions is made, in respect of matter covered by these rules by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the President in regard to maters covered by such special provisions; and

f) Officers holding posts borne on the cadres of Branch "A"

and Branch "B" of I.F.S. including non-career Heads of Missions or Posts.

The President may, however, by order exclude any class of Government servants from the operation of all or any of the provisions of these Rules.

1.2. A Government servant governed by the Classification Control and Appeal Rules who is transferred temporarily to the Railways will continue to be governed by the Classification, Control & appeal Rules.

A(10) A(7) A(11) 1.3. Among the excepted categories, the Railway servants are governed by the Railways (Discipline & Appeal) Rules, the members of All India Services by the All India Services (Discipline & Appeal) Rules, 1969, and officers holding posts borne on the cadres of Branch 'A' and Branch 'B' of the Indian Foreign Service by the Indian Foreign Service (Conduct & Discipline) Rules, 1961.

1.4. The Defence services personnel (other than Civilian Government servants in the Defence Services) who are paid out of the Defence Services Estimates and are subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 are governed by the disciplinary provisions contained in the respective Acts and the Rules made thereunder.

1.5. the employees of public sector undertakings, statutory corporations, etc, are governed by the discipline and appeal rules framed by the respective public undertaking or corporation in exercise of the powers conferred upon it by the statue or by the Articles of Memorandum constituting it. In certain cases, they are laid down in the contract of service. The Central Vigilance Commission on the basis of the report of a Working Group, including representatives of important Public Undertakings, had also approved the draft of a set of Model Conduct, Discipline and Appeal Rules for Public Sector Undertakings. These Model

Rules were circulated by the Bureau of Public Enterprises to all the Public Undertakings for their adoption. Many of the Public Undertakings have adopted these rules and others are in the process of their adoption.

1.6. The various sets of discipline rules pertaining to Government servant have been framed in conformity with the provisions of Article 311 of the Constitution. The basic provisions in them are therefore similar in character. As the bulk of Government servants in civil employ are governed by the C.C.A. Rules, the procedures discussed in the Manual are those prescribed in those rules. While a reference to variations of an important nature in other rules has been made in appropriate places, the Chief Vigilance Officer/Vigilance Officer should take care to ensure that the provisions of the respective rules are observed where they vary from those prescribed in the CCA Rules. This is particularly necessary in the case of Public Sector, Enterprises, and Statutory Corporations, as their employees are governed by the rules framed by the respective organisations.

2. Penalties

2.1. Under Rule 11 of the CCA Rules, the competent authority may, for good and sufficient reasons, impose on a Government servant any of the following penalties:- A(4)

M*inor penalties*

(1) Censure;
(2) Withholding of promotion'

(Explanation : Non-promotion of a Government servant, whether in a substantive or officiating capacity, after consideration of his case for promotion to a service, grade or post which he is eligible will not amount to a penalty).

(3) Recovery from his pay of the whole or part of any pecuniary loss caused by the Government servant to the Government by negligence or breach of orders;

(3A) Reduction to a lower stage in the time-scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting his pension;

(4) Withholding of increments of pay;

(Explanation : The following will not amount to a penalty:-

(i) Withholding of increments of pay of a Government servant for his failure to pass any departmental examination in accordance with the rules or orders governing the service to which he belongs or post which he holds or the terms of his appointment;

(ii) Stoppage of a Government servant at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar.

Major penalties

(5) Reduction to a lower stage in the time-scale of pay, for a specified period with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(6) Reduction to a lower time-scale of pay grade, post or service which shall ordinarily be a bar to the promotion of the

Government servant to the time-scale of pay, grade, post or Service from which he was reduced, with or without further directions regarding conditions of restoration to the grade of post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or Service;

(Explanation : The following shall not amount to a penalty:-

(i) Reversion of a Government servant officiating in a higher Service, grade or post to a lower Service grade or post, on the ground that he is considered to be unsuitable for such higher Service, grade of port or on any administrative ground unconnected with his conduct;

(ii) Reversion of a Government servant, appointed on probation to any other Service, grade or post to his permanent Service grade or post during or at the end of the period of promotion in accordance with the terms of his appointment of the rules and order governing such probation;

(iii) Replacement of the services of a Government servant, whose services had been borrowed from a State Government or an authority under the control of a State Government at the disposal of the State Government or the authority from which the services of such Government servant had been borrowed.

(7) Compulsory retirement

(Explanation : Compulsory retirement of a Government servant in accordance with the provisions relating to his superannuation or retirement does not amount to penalty).

8) Removal from service which shall not be a disqualification for future employment under the Government;

(Explanation : Termination of service in the undermentioned circumstances will not amount to a penalty of removal from service :-

(i) of a Government servant appointed on probation, during or at the end of the period of his probation, in accordance with the terms of his appointment or the rules and orders governing such probation, or

(ii) of a temporary Government servant in accordance with the provisions of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965; or

(iii) of a Government servant, employed under an agreement, in accordance with the terms of such agreement).

(9) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

Provided that, in every case in which the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (8) or clause (9) shall be imposed;

Provided further that in any exceptional case and for special reasons recorded in writing any other penalty may be imposed.

3. Warning

3.1. An order of censure is a formal act intended to convey that the person concerned has been held guilty of some blame-worthy act or omission for which it has been found necessary to award him a formal punishment. There may be occasions, however, when a superior officer may find it necessary to criticise adversely the work of an officer working under him (e.g. point out negligence, carelessness, lack of thoroughness, delay etc.) or he may call for an explanation for some act or omission and taking all factors into consideration, it may be felt that, while the matter is not serious enough to justify the imposition of the formal punishment of censure, it calls for some formal action, such as, the communication of a written or oral warning, admonition reprimand or caution. Administration of a warning in such circumstances does not amount to a formal punishment. It is an administrative device in the formal punishment. It is an administrative device in the hands of the superior authority for conveying its criticism and disapproval of the work or conduct of the person warned and for making it known to him that he has done something blame-worthy, with a view to enabling him to make an effort to remedy the defect and generally with a view to toning up efficiency and maintaining discipline. B(13-14) B(19) B(65A) B(104)

3.2 The punishment of censure can be imposed only for "good and sufficient reasons" after following the prescribed procedure and the imposition of the punishment is conveyed by a formal written order. A record of the punishment is kept on the officer's confidential roll and will have its bearing on the assessment of his merit or suitability for promotion to higher rank. A warning may, however, be administered verbally or in writing. If a warning/displeasure/ reprimand is issued in writing, a copy of it should be placed in the personal file of the officer concerned. At the end of the year (or period of report), the reporting authority, while writing the confidential report of the officer, may decide not to make a reference in the confidential report to the warning/displeasure/reprimand, if, in the

opinion of that authority, the performance of the officer reported on after the issue of the warning or displeasure or reprimand, as the case may be, has improved and has been found satisfactory. If, however, the reporting authority comes to the conclusion that despite the warning/displeasure/ reprimand, the officer has not improved, it may make appropriate mention of such warning/displeasure/reprimand, as the case be, in the relevant column in Part-III of the form of confidential Report relating to assessment by the Reporting Officer, and, in that case, a copy of the warning/ displeasure/reprimand referred to in the confidential report should be placed in the CR dossier as an annexure to the confidential report for the revenant period. The adverse remarks should also be conveyed to the officer and his representation, if any, against the same disposed off in accordance with the procedure laid down in the instructions issued in this regard.

3.3. Any superior authority can administer a warning to an official working under it. It is, however, desirable that the authority administering the warning should not normally be lower than the authority which initiates the confidential report on the official to be warned.

B(104) 3.4. Where a departmental proceeding has been completed and it is considered that the officer concerned deserves to be penalised, he should be awarded any of the statutory penalties mentioned in rules 11 of the CA Rules. In such a situation a record-able warning should not be issued as it would for all practical purposes amount to a "Censure" which is a formal punishment to be imposed by a competent disciplinary authority after following the procedure prescribed in the relevant disciplinary rules. The Delhi High Court has, in the case of Nadhan Singh Vs. the Union of India, expressed the view that "warning" kept I the confidential Report Dossier has all the attributes of "Censure". In the circumstances, where it is considered after the conclusion of disciplinary proceedings that some blame attaches to the officer concerned which necessitates cognizance of such fact, the disciplinary authority should award any of the

appropriate penalties. If the intention of the disciplinary authority is not to award a penalty of "Censure", then no record-able warning should be awarded. There is no restriction on the right of the competent authority to administer warnings purely as an administrative measure and not as a result of disciplinary proceedings.

3.5. A warning or reprimand, etc., may also be administered when as a result of a preliminary investigation or inquiry the competent disciplinary authority comes to the conclusion that the conduct of the official is somewhat blameworthy, though not to the extent calling for the imposition of a formal penalty. In such cases the warning should be administered on the orders of the competent disciplinary authority only. In cases where a preliminary inquiry was started at the instance of an authority higher than the competent disciplinary authority, the result of the inquiry should be shown to that authority also before the case is closed with the administration of a warning.

4. Displeasure of Government

On occasions, an officer may be found to have committed an irregularity or lapse of a character which though not considered serious enough to warrant action being taken for the imposition of a formal penalty or even for the administration of a warning but the irregularity or lapse is such that it may be considered necessary to convey to the officer concerned the sense of displeasure over it. Such displeasure is usually communicated in the form of a letter and a copy of it may, if so decided, be placed on the character roll of the officer in the manner indicated in para 3.2. for placing a copy of the warning on the CRs. Where a copy of the letter communicating the "Displeasure of the Government" is kept in the character roll of the officer, it will constitute an adverse entry and the officer concerned will have the right to represent against the same in accordance with the existing instructions relating to communication of adverse remarks in Confidential Reports and consideration of B(65A)

representations against them.

5. Reduction of Pension

A Government servant ceases to be subject to the disciplinary rules after retirement. Pension and Gratuity once sanctioned cannot be reduced, withheld or withdrawn except in accordance with the provisions of rule 9 of the CCS(Pension) Rules, 1972 or the Rule 6 of the AIS (Death-cum-Retirement Benefit) Rules, 1958 in the case of officer of All India Services. The procedure to be followed in such cases is given in Chapter XV.

A(4)

6. Disciplinary Authority

6.1. Rule 2 (g) of the CCA Rules defines the term disciplinary authority as the authority competent to impose on a government servant any of the penalties specified in Rule 11. The penalties specified in clauses (i) to (iv) (i.e. any of the minor penalties) may, however, also be imposed by an authority lower than the appointing authority on a member of a Central Civil Service or on a holder of a post included in the General Central Service as specified in the schedule in the CCA Rules or by any other authority empowered in this behalf by a general or special order of the President.

6.2. Rule 12 of the CCA Rules also provides that:-

(1) The President may impose any of the penalties specified in Rule 11 on any Government servant; and

(2) in respect of a member of a Central Civil Service Class III (other than the Central Secretariat Clerical Service) or of a Central Service Class IV, any of the penalties specified under Rule 11 may be imposed by:-

(a) the Secretary to the Government of India in a Ministry/Department of the Government of India if the Government servant concerned is serving in that Ministry or Department, or

(b) if he is serving in any other office, by the head of the office, except where the head of that is lower in rank than the authority competent to impose a penalty as specified in the schedule to the CCA Rules.

6.3. The Schedule to the CCA Rules referred to in sub-paras 6.1. and 6.2. above enumerates the services and posts under different Ministries/ Departments/offices and the authority empowered to impose penalties on member of the services and holders of posts. Every Chief Vigilance Officer/Vigilance Officers should keep the Schedule in so far as it pertains to services and posts with which he is concerned under a constant review to ensure that necessary amendment is made to the Schedule as soon as a new service or a post not covered by the existing Schedule is created or an amendment becomes necessary for any other reason.

6.4. The exercise of the power by the disciplinary authority is subject to the provisions of sub-rule (4) of Rule 12 of CCA Rules wherever that rule is attracted.

6.5. The disciplinary authority is determined with reference to the post held by an official at the time disciplinary proceedings are instituted against him. Therefore, if a Government servant is promoted to a higher post, the disciplinary authority shall be determined with reference to that higher post even if the promotion is on a temporary basis. Similarly where a Government servant is reverted to a lower post and at the time of institution of proceedings is holding a lower post, the disciplinary authority shall be determined with reference to that lower post. C(168)

7. Authority competent to institute disciplinary proceedings

under CCA Rules.

7.1. The President (or any other authority empowered by him by a general or special order) may institute or may direct a disciplinary authority to institute disciplinary proceedings against any Government servant.

7.2. Even if disciplinary authority is competent to impose only a minor penalty, it is competent to initiate disciplinary proceedings as for a major penalty.

8. Authority competent to initiate proceedings under the A.I.S. (D & A) Rules, 1969.

A(7) 8.1. Under Rule 7 of the All India Services (Discipline and Appeal) Rules, 1969, disciplinary proceedings against a member of the All India Services may be instituted:-

a) by the Government under whom he is for the time being serving, if the act or omission which has rendered him liable to a penalty was committed before his appointment to an All India Service;

b) by the Government under whom he was serving at the time of the commission of such act or omission if the act or omission was committed after his appointment to an All India Service.

8.2. The Central Government can initiate disciplinary proceedings against a member of an All India Service if the act or omission was committed while he was serving under the Central Government or while on deputation to any public sector undertaking or local authority under the Central Government. The Central Government can also initiate

disciplinary proceedings against a member of an All India Service who has gone back to the State if the act or omission was committed while he was on deputation under the Centre.

8.3. A State Government can similarly initiate proceedings against a member of an All India Service for the imposition of any of the penalties, including any of the major penalties, if the act or omission was committed while he was serving under the State Government. But under rule 7(2) of A.I.S. (D&A) Rules, 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.

8.4. Cases relating to disciplinary proceedings against members of All India Services are dealt with the Ministry of Home Affairs and the Department of Personnel and Training.

9. Authorities competent to initiate disciplinary proceedings against officers lent or borrowed by one department to another or State Government etc.

Where the services of a Government servant have been lent or borrowed by one Department to or from another Department or have been lent to or borrowed from a State Government or an authority subordinate thereto or a local or other authority, the borrowing authority will have the powers of the disciplinary authority for initiating disciplinary proceedings against the Government servant. The lending authority will, however, be informed forthwith of the circumstances leading to the commencement of the disciplinary proceedings. Even if the misconduct was committed while the officer was serving under the lending authority, the borrowing authority is competent to initiate action in respect of such misconduct.

10. C.B.I. Reports

10.1 In cases relating to Gazetted Officers and other category "A" officers (see para 3.1.1. Chapter II) the CBI send their reports recommending regular departmental action or such action as deemed fit to the Central Vigilance Commission. Simultaneously, a copy of the report is sent by the CBI to the disciplinary authority concerned. If the disciplinary authority has any comments on such a report, the same should be sent to the Central Vigilance Commission within two months of the receipt of the CBI report, so that the Commission may take them into consideration while tendering its advice. It will, however, be open to the Ministries/ Departments, if there are any special circumstances, to approach the Commission in individuals cases for reasonable extension of time to enable them to furnish their comments. If no comments are received within the prescribed/extended period, the Commission will tender advice, on the basis of material before it.

C(40)
C(57)
C(67)
C(58)

It is not necessary to call for the explanation of the officer at this stage as the comments of the authorities required are only on the CBI report. The comments of the Ministries/Departments/Public Undertakings/Nationalised Banks should specifically deal with the following :-

C(63)

(i) If the CBI report deals with technical matters, does the disciplinary authority agree with view taken by the CBI on such question?

(ii) If the CBI report deals with departmental procedure and practices, has the position been stated correctly?

(iii) Has the factual position as obtainable from the records of the Department correctly stated by the CBI?

(iv) If the report deals with the use or abuse of discretion by the

accused officer, what has the disciplinary authority to say about the discretionary powers and their use by the accused officer in the case (s) under discussion and also about the exercise of such discretion by other officers in similar situations?

(v) In the Department's view, are there some material witnesses who should have been examined by the CBI but whom the CBI has not, in fact, examined?

(vi) Are there any extenuating circumstances in favour of the accused? If so, what are these?

(vii) Does the Department agree with the conclusion drawn by the CBI? If not, what are its own conclusions/ recommendations?

(viii) If the accused has submitted any representation to the Department relating to the CBI report, the Department should also give its commends on such representation.

The above list is only illustrative and the Department is not precluded from offering comments of a general nature or bringing any other relevant matter to the Commission's notice that it may consider necessary. While furnishing the comments to the Central Vigilance Commission, the Ministries/Departments/Public Undertakings/ Nationalised Banks may clearly indicate the respective functions, duties and responsibilities of all the Suspect Officers involved in the case with regard to the impugned transaction. C(103) C(18) C(39)

10.2. The CBI need not send the original documents to the disciplinary authorities as a matter of course. If in any particular case the disciplinary authority feels the necessity of examining the records in original, it should make a request for the particular records to the CBI B(72)

who will arrange to produce the requisitioned documents before the disciplinary authority expeditiously. The disciplinary authorities will, however, ensure the safety of the records.

10.3. The report of the Central Bureau of Investigation is a confidential document and should not be produced before the Inquiry Officer or even before a Court of Law. Privilege can be claimed in a Court of Law under Section 123 or 124 of the Evidence Act. No direct reference should be made about the CBI Report in the statements/ affidavits filed in the Courts of Law, as it would be difficult to claim privilege for the production of documents before a court of law, if a direct reference is made in the statements/affidavits. Reference in the statements/affidavits may be restricted to the material which is contained in the statements of charges and allegations served on the accused public servant.

11. Institution of formal proceedings

11.1 Once a decision has been taken, after a preliminary inquiry, that a prima facie case exists and that formal disciplinary proceedings should be instituted against a delinquent Government servant under the CCA Rules, the disciplinary authority will need to decide whether proceedings should be taken under Rule 14 (i.e. for imposing a major penalty) or under Rule 16 (i.e. for imposing a minor penalty).

11.2 The choice of the rule at this stage is a matter of vital significance. It will determine the procedure to be followed for the further conduct of the proceedings. The procedure under Rule 14 is musch more elaborate than that prescribed under Rule 16. It will be waste of time and effort to adopt the lengthy procedure of Rule 14 in cases in which only a minor penalty is indicated. In a case in which proceedings are initiated under rule 14 (as for a major penalty), if after examining the report of oral inquiry the disciplinary authority considers that it would be sufficient

to impose a minor penalty, he can do so. But in a case in which proceedings are initiated under Rule 16 (as for a minor penalty) it would not be possible for the disciplinary authority to impose a major penalty. He would have to start proceedings de novo under Rule 14 if he wants to do it.

11.3 A decision has to be taken by the disciplinary authority on the basis of the circumstances of each case as revealed by preliminary inquiry and by determining provisionally the nature of the penalty - whether major or minor - that may be imposed upon the Government servant in the event of the satisfactory substantiation of the allegations.

11.4. Certain types of vigilance cases in which it may be desirable to start proceedings for imposing a major penalty are given below as illustrative guidelines:-

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

a) Possession of disproportionate assets;

b) Obtaining or attempting to obtain illegal gratification;

c) Misappropriation of Government property, money or stores;

d) Obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate.

(ii) Falsification of Government records;

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

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

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

(vi) False claims on the Government like T.A claims reimbursement claims, etc.

11.5 In cases in which the institution of proceedings is advised by the Central Vigilance Commission, the Commission will also advise, keeping
E(1) in view the gravity of the allegations, whether proceedings should be initiated for the imposition of a major penalty or a minor penalty.

12. Procedure for imposing minor penalties.

12.1. In cases in which the disciplinary authority decides that proceedings should be initiated for imposing a minor penalty, the disciplinary authority will inform the Government servant concerned in writing of the proposal to take action against him by a Memorandum accompanied by a statement of imputations of misconduct or misbehaviour for which action is proposed to be taken, giving him such time as may be considered reasonable, ordinarily not exceeding ten days, for making such representation as the Government servant may wish to make against the proposal. In this Memorandum no mention should be made of the nature of the penalty which may be imposed. The Memorandum and the statement of imputations of misconduct or misbehaviour should be drafted by the Chief Vigilance Officer/Vigilance Officer. The memorandum should be signed by the disciplinary authority and not by any one else on its behalf.

12.2. If the competent disciplinary authority in respect of the Government servant against whom action proposed to be taken is the President, the file should be shown to the Minister concerned before the charge-sheet is issued and the memorandum should be signed in the name of the President by an officer competent to authenticate orders on behalf of the President under Article 77 (2) of the Constitution.

12.3 Rule 16 of the CCA Rules does not provide for the accused Government servant being given the facility of inspecting records for preparing his written statement of defence. There may, however, be cases in which documentary evidence provides the main grounds for the action proposed to be taken. The denial of access to records in such cases may handicap the Government servant in preparing his representation. Request for inspection of records in such cases may be considered by the disciplinary authority on merits

12.4. After taking into consideration the representation of the Government servant or without it if no such representation is received from him by the date specified, the disciplinary authority will proceed, after taking into account such evidence, as it may think fit, to record its findings on each imputation of misconduct or misbehavior.

12.5. If as a result of its examination of the case and after taking the representation made by the Government servant into account, the disciplinary authority is satisfied that the allegations have not been proved, it may exonerate the Government servant. An intimation of such exoneration will be sent to the Government servant in writing.

12.6. In case the disciplinary authority is of the opinion that the allegations against the Government servant, stand substantiated, it may impose upon him any of the minor penalties specified in Rule 11 of the CCA Rules. In the order imposing a formal penalty it is not desirable to

refer to the advice given by the Central Vigilance Commission to the
C(125) disciplinary authority.

12.7. In cases in which minor penalty proceedings were instituted on the advice of the Central Vigilance Commission, consultation with the Commission at the stage of imposition of the penalty is not necessary if the disciplinary authority decides to impose one of the minor penalties specified in Rule 11 of the CCS (CCA) Rules, 1965 or other corresponding rules. In such cases a copy of the order imposing minor penalty should be endorsed to the Commission. This does not apply to minor penalty cases where oral inquiry has been ordered. In such cases, the Commission would tender second stage advice after considering the report of the Inquiring Authority. This does not also apply to cases where the disciplinary authority decides not to impose any of the minor penalties. In other words, cases in which the disciplinary authority decides to hold
A(4) oral Inquiry or to drop the proceeding will have to be referred to the Commission. While referring the case, the records of the case will have to be sent to the Commission. Where any statement have been made in the representation of the Government servant to controvert the allegations, the Commission's attention will be specifically drawn to the correct facts.

12.8. In case the Government servant is one whose services had been borrowed from another department or, office of a State Government or a local or other, authority and if other borrowing authority, who has the powers of disciplinary authority for the purposes of conducting a disciplinary proceedings against him, is of the opinion that any of the minor penalties specified in clauses (i) to (iv) of Rule 11 of the CCA Rules should be imposed, it may make such orders on the case as it deems necessary after consultation with the lending authority. In the event of difference of opinion between the borrowing authority and the lending authority, the services of the Government servant will be replaced at the disposal of the lending authority.

12.9. Under Rule 16(1) (b) of the CCA Rules, the disciplinary authority may, if it thinks fit, in the circumstances of any particular case, decide that an inquiry should be held in the manner laid down in sub-rules (3) to (23) of Rule 14 of the CCA Rules. The implication of this rule is that on receipt of representation of Government servant concerned on the imputations of misconduct or mis-behaviour communicated to him, the disciplinary authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not. In a case where a delinquent Government servant has asked for inspection of certain documents and cross examination of the prosecution witnesses, the disciplinary authority should naturally apply its mind more closely to request and should not reject the request solely on the ground that an inquiry is not mandatory. If the records indicate that, notwithstanding the points urged by the Government servant, the disciplinary authority could after due consideration, come to the conclusion that an inquiry is not necessary, it should say so in writing indicating its reasons, instead of rejecting the request for holding inquiry summarily without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice. In cases in which it is decided to hold an inquiry, all the formalities beginning with the framing of articles of charge, statement of imputation etc, will have to be gone through. The procedure to be followed will be the same as prescribed for an inquiry into a case in which a major penalty is proposed to be imposed. Such inquiry will be entrusted to one of the Commissioners for Departmental Inquiries attached to the Central Vigilance Commission in cases in which the proceedings were instituted on the advice of the Central Vigilance Commission. Form E (1-A) is to be issued for initiation of minor penalty proceedings in cases where the disciplinary authority decides to hold the enquiry. B(62)

12.10 If in a case it is proposed after considering the representation, if any, submitted by a Government servant, to withhold increments of

pay for a period exceeding three years or to withhold increments of pay with commulative effect for any period or if the penalty of withholding
B(38) of increments is likely to affect adversely the amount of pension payable to the Government Servant, an oral inquiry shall invariably be held in the manner laid down in sub-rules (3) to (23) of rule 14 of the CCA
B(63) B(75) Rules.

B(117) 12.11 In cases in which proceedings have been initiated under rule 16(1) (a) of the CCA Rules and where no oral inquiry has been held, a reference will be made to the UPSC, in cases in which consultation with UPSC is required, after the representation, if any, of the Government servant against the proposal to take action against him has been received in the form of an official letter. In cases in which proceedings were initiated under rule 16(1)(b) of the CCA Rules and where an oral inquiry has been held, the UPSC will be consulted after the receipt of the report of the Inquiring Authority. The record of the case will be forwarded to the Commission with clarifications/comments, where necessary to explain any factual/procedural points only in the light of any remarks contained in the Inquiry Report. This note will form part of the record.

12.12 The record of proceedings in such cases shall include :-

(i) A copy of the intimation to the Government servant of the proposal to take action against him;

(ii) A copy of the statement of imputations of misconduct or misbehaviour delivered to him;

(iii) His representation, if any;

(iv) The evidence produced during the inquiry if an inquiry is held in the manner laid down in sub rules (3) to (23) of Rules 14 of CCA Rules;

(v) The advice of the Union Public Service Commission, if any;

(vi) The findings on each imputation of misconduct or misbehaviour; and A(4) A(3)

(vii) The orders on the case together with the reasons thereof.

13. Procedure for imposing major penalties

13.1 Rule 14(1) of the CCA Rules provides that no order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry has been held in the manner prescribed in Rules 14 and 15 of the CCA Rules or in the manner provided by the Public Servants (Inquiries) Act, 1850, where an inquiry is held under that Act.

13.2 Ordinarily an inquiry will be made in accordance with the provisions of Rule 14 of the CCA Rules. However, in respect of a Government servant who is not removable from his office without the sanction of Government, the disciplinary authority, which will be the President in the case of such a Government servant, may decide to make use of the procedure laid down in the Pubic Servants (Inquiries) Act, 1850 (hereafter referred to as the "Act") if it is considered that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour on his part.

13.3. The choice of the procedure is a matter within the discretion of the disciplinary authority. It is not obligatory to proceed under the Act when Government proposes to take action against a Government servant covered by the Act (Venkataraman Vs. Union of India A.I.R. 1954, SC 375).

13.4 There is no material difference in the scope of the two procedures which is to make a fact-finding inquiry to enable Government to determine

the punishment which should be imposed upon the delinquent officer. Like the proceedings under the CCA Rules the Commission (s) appointed under the Act to make the inquiry do not constitute a judicial tribunal though they possess some of the trappings of a court. The findings of the Commissioner (s) upon the charge are a mere expression of opinion and do not partake of the nature of a judicial pronouncement and the Government is free to take any action it decides on the report.

13.5. The holding of an inquiry against a Government servant under the Act does not involve any discrimination and will not give him cause to question the conduct of an inquiry against him on that ground within the meaning of Article 14 of the Constitution. A person against who an inquiry has been held under that Act could not claim a further or a fresh inquiry under the CCA Rules (Venkataraman Vs. Union of India).

13.6. The procedure under the Act is, however, distinguishable from the provisions of the disciplinary rules in that while an inquiry made under the Act is a public inquiry, a departmental inquiry made under the relevant disciplinary rules is not so. Another distinguishing feature is that the Commissioner (s) appointed under the Act have the power of punishing contempts and obstructions to the proceedings and of summoning witnesses and to compel production of documents. These factors will need to be taken into account in deciding whether in any particular case the procedure of the Act should be adopted or not. An inquiry under the provisions of the Act is generally made in a case in which a high official is involved and it is considered desirable in the circumstances of the case to have a public inquiry. Generally a judicial officer like a Judge of a High Court is appointed as a Commissioner to conduct an inquiry under the Act. That procedure will, however, not be found suitable in a case which might involve the disclosure of information or production of documents prejudicial to national interest or to the security of the State.

E(2)

14. Articles of charge

14.1. As soon as a decision has been taken by the competent authority to start disciplinary proceedings for a major penalty, the Chief Vigilance Officer/Vigilance Officer will draw up on the basis of the material gathered during the Investigation:-

i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles or charge;

ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge which shall contain:

a) a statement of all relevant facts including any admission or confession made by the Government servant; and

b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

In cases when the charge-sheet has been drafted by the departmental officers or by the C.B.I., the Chief Vigilance Officer should personally scrutinise the charges.

14.2. A charge may be described as the prima-facie proven essence of an allegation setting out the nature of the accusation in general terms, such as, negligence in the performance of official duties, inefficiency, acceptance of sub-standard work, false measurement of work executed, execution of work below specification, breach of a conduct rule, etc. a charge should briefly, clearly and precisely identify the misconduct/ misbehaviour. It should also give time, place and persons or things involved so that the public servant concerned has clear notice of his C(65)

involvement.

C(94) 14.3. The articles of charge should be framed with great care. The following guide lines will be of held:-

a) Each charge should be expressed in clear and precise terms, it should not be vague;

b) If a transaction/event amount to more than one type of misconduct then all the misconducts should be mentioned;

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

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

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

f) The wording of the charge should not appear to be an expression of opinion as to the guilt of the accused;

g) A charge should not relate to a matter which has already been the subject-matter of an inquiry and decision, unless it is based on benefit of doubt or on technical considerations;

h) A charge should not refer to the report on Preliminary Investigation or the opinion of the Central Vigilance Commission';

i) The articles of charge should first give the plain facts leading to the charge and then only at the end of it mention the nature of misconduct/misbehavior (violation of Conduct Rules, etc.).

15. Statement of imputations

The statement of imputation should give a full and precise recitation of the specific and relevant acts of commission or omission on then part of the Government servant in support of each charge including any admission or confession made by the Government servant and any other circumstances which it is proposed to take into consideration. A statement that a Government servant allowed certain entries to be made with ulterior motive was held to be much too vague. A vague accusation that the Government servant was in the habit of doing certain acts in the past is not sufficient. It should be precise and factual. In particular, in cases of any misconduct/misbehaviour, it should mention the conduct/behaviour expected or the rule violated. It would be improper to call an Investigating Officer's Report a statement of imputations. While drafting the statement of imputations, it would not be proper to mention the defence and enter into a discussion of the merits of the case. Wording of the imputations should be clear enough to justify the imputations inspite of the likely version of the Government servant concerned.

16. List of Witnesses

A number of witnesses are usually examined during the course of the preliminary inquiry and their statements are recorded. The list of such witnesses should be carefully checked and only those witnesses who will be able to give positive evidence to substantiate the allegations should be included in the statement for production during the oral

inquiry. Formal witnesses to produce documents only need not be mentioned in the list of witnesses.

17. List of documents

The documents containing evidence in support of the allegations which are proposed to be listed for production during the inquiry should be carefully scrutinised. All material particulars given in the allegations, such as dates, names, makes, figures, totals of amount, etc., should be carefully checked with reference to the original documents and records.

18. Draft articles of charge prepared by Special Police Establishment

In cases investigated by the Special Police Establishment, a draft of articles of charge, statement of imputations, and list of documents and witnesses will be drawn up by the Special Police Establishment and sent to the disciplinary authority along with their report. The Chief Vigilance Officer/Vigilance Officer should carefully scrutinise them. If there is any discrepancy or a doubt arises about the correctness of any item and any amendment is considered necessary, the matter should be promptly discussed and cleared with the Special Police Establishment.

E(2)

B(53)

19. Standard form of articles of charge

Standard skeleton forms of the articles of charge and the statement of imputations and of the covering memorandum are given in Section E. The covering memorandum should be signed by the disciplinary authority or in case in which the President is the Disciplinary Authorityby an officer who is authorised to authenticate orders on behalf of the President.

20. Delivery of articles of charge

20.1. the disciplinary authority will deliver or cause to be delivered

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 charge is proposed to be sustained to the Government servant in person if he is on duty and his acknowledgement taken or by registered post, acknowledgement due. The acknowledgement of the Government servant should be added to the case.

20.2. If the Government servant evades acceptance of the articles of charge and/or refuses to accept the registered cover containing the articles of charge, the articles of charge will be deemed to have been duly delivered to him as refusal or a registered letter is normally tantamount to proper service of its contents.

20.3. A copy of the articles of charge and the accompanying papers will be endorsed to the Special Police Establishment in cases in which disciplinary proceedings are instituted on the basis of an investigation made by them.

21. Statement of defence

21.1 The Government servant should be required to submit his reply to the articles of charge (i.e. his written statement of defence) by a date to be specified in the covering memorandum and should also be required to state whether he pleads guilty and whether he desires to be heard in person. Ordinarily the time allowed to the Government servant for submitting his written statement of defence should not exceed 10 days.

21.2. Unlike the CCA Rules of 1957, the CCS (CCA) Rules, 1965, do not provide for inspection of documents by the charged official for the submission of written statement of defence. Rule 14 (4) is not intended for submission of elaborate statement of defence, but only to give an opportunity to the Government Servant to admit or deny his guilt. For admitting or denying the charges, no inspection of documents B(125)

is necessary and that is why such inspection has not been provided for in Rule 14(4). If a Government servant admits the charges, there will be no need to hold an inquiry. If he does not, an inquiry will be held at which he will be provided with the fullest opportunity to inspect and take extracts of various documents. However, notwithstanding the above position or rules, in the interest of timely conclusion of departmental proceedings, as far as possible, copies of the documents and the statements of witnesses relied upon for proving the charges may be furnished to the charged officer along with the charge-sheet. If the documents are bulky and the copies cannot be given to the Government Servant, he may be given an opportunity to inspect these documents in about 15 days time.

22. Action on receipt of the written statement of defence

22.1. On receipt of the written statement of defence, the disciplinary authority should examine it carefully. If all the charges have been admitted by the Government servant, the disciplinary authority will take such evidence as it may think fit and record its findings on each charge. Further action on the findings will be taken in the manner described in Chapter XII. All cases pertaining to Gazetted Government servants and other category "A" officers (please see para 3.1.1. Chapter II) in respect of whom the Central Vigilance Commission is required to be consulted, will be referred to the Commission for advice (second stage advice). The scheme of consultation with the Commission in respect of major penalty cases pertaining to such officers envisages consultation with the Commission at two stages. The first stage of consultation arises when initiating disciplinary proceedings, while second stage consultation is required before a final decision is taken at the conclusion of the proceedings. It follows, therefore, that the Commission should also be consulted for second stage advice in cases where the disciplinary
B(111) authority having initiated action for major penalty proceedings proposes to close the case on receipt of the Statement of Defence.

22.2. The disciplinary authority has the inherent power to review and modify the articles of charges or drop some of the charges or all the charges after the receipt and examination of the written statement of defence submitted by the accused Government servant under rule 14(4) of the CCS (CCA) Rules, 1965. The disciplinary authority is not bound to appoint an Inquiry Officer for conducting an inquiry into the charges which are not admitted by the accused Government servant but about which the disciplinary authority is satisfied on the basis of the written statement of defence that there is no further course to proceed with The exercise of the powers to drop the charges after consideration of the written statement of defence will be subject to the following conditions:-

(1) In cases arising out of investigation by the Central Bureau of Investigation, latter should be consulted before a decision is taken to drop any of or all the charges on the basis of the written statement of defence. The reasons recorded by the disciplinary authority for dropping the charges should also be intimated to the Central Bureau of Investigation.

(2) The Central Vigilance Commission should be consulted where the disciplinary proceedings were initiated on the advice of the Commission and the intention is to drop any of or all the charges.

22.3. It will be observed from para 22.1. of this Chapter that the Central Vigilance Commission is consulted at two stages of departmental proceedings against gazetted officer of the Central Government and other category "A" officers, i.e. before initiating departmental proceedings and again before a final decision is taken on the cases against such officers. A second reference to the Commission is also required to be made for reconsideration of its advice in cases in which the disciplinary authority proposes to disagree with its advice. In many cases the C(139)

disciplinary authority "decides" to disagree with the Commission and then send the case back to the Commission for reconsideration of its
B(103) advice. This is not quite in order and requests for reconsideration should be made at a stage prior to the final decision, for once the competent authority has 'decided' or resolved to differ with the Commission, the case will be treated as one of non-acceptance of the Commission's advice.

22.4. With a view to brining about greater uniformity in examining on behalf of the President the advice tendered by the Commission and taking decisions thereon, it has been laid down that the Department of Personnel and Training should be consulted before the Ministries/ Departments finally decide (i.e. after second reference to the CVC for reconsideration), vide previous paragraph, to differ from/not to accept any recommendation of the Commission in those cases which relate to Gazetted Officers for whom the appointing authority is the President. Such a reference to that Department in those cases should be made at the following stages:-

i) where the CVC advises at the first stage but the authority concerned does not propose to agree with the advice;

ii) where the authority concerned proposes not to accept or differ from the advice of the CVC at the Second Stage.

Cases in which the Heads of Department or other authorities like Commissioner of Income-tax, Collector of Central Excise, Chief engineer, etc. are the disciplinary authorities, need not be referred to the Department of Personnel and Training.

Similar cases relating to officers of the Public Sector Undertakings in which decisions are to be taken by the Board of Directors need not also be referred to the Department of Personnel and Training. However, in such cases copies of the final orders passed by the concerned public

sector undertaking together with a separate note giving reasons for differing from, or non-acceptance of, any recommendation of the Central Vigilance Commission, should be sent to that Department for information as soon as possible.

23. Appointment of Inquiring Authority for charges which are not admitted

23.1 If the disciplinary authority finds that any or all the charges have not been admitted by the Government servant in his written statement of defence or if no written statement of defence is received by him by the date specified, the disciplinary authority may itself inquiry into such charges or appoint an Inquiring Authority to inquire into the truth of the charges. Though the CCA Rules permit such an inquiry being made by C(15)
the disciplinary authority, itself, the normal practice is to appoint another officer as inquiring authority. It should be ensured that the officers so C(30)
appointed has no bias and had no occasion to express an opinion in the earlier stages of the case.

23.2. In all cases pertaining to category "A" officers (para 3.1.1. Chapter II) in respect of whom the Central Vigilance Commission is required to be consulted or in any other case in which disciplinary C(101)
proceedings for imposing a major penalty have been initiated on the advice of the Central Vigilance Commission, the inquiry will be entrusted to an of the Commissioner for Departmental Inquiries borne and the strength of the Commission. In cases where non-gazetted officers are involved with gazetted Officers, the departmental inquiry will be entrusted to a Commissioner for Department Inquiries. In all cases where the Commission advises initiation of major penalty proceedings, it also C(105)
nominates simultaneously a Commissioner for Departmental Inquiries to whom the inquiry should be entrusted. In case the charges are not admitted by the officer concerned or if he does not file a written statement of defence within the prescribed time limit, orders appointing the Commissioner for Departmental Inquiries as the Inquiring Authority

should be issued by the disciplinary authority straightaway. This procedure obviates correspondence between the Commission and the disciplinary authority at a later stage and the time taken in completing the major penalty proceedings is thus reduced. The appointment of the Commissioner for Departmental Inquiries as the Inquiring Authority should be made only after the receipt of the officer's reply to the charge-
C(11) sheet or on the expiry of the date by which his reply was to be received whichever is earlier (Judgement of the Orissa High Court in the case of Rabindranath Mohanty Vs. State of Orissa).

23.3. If in any particular case covered by the sub-para 23.2 above, the disciplinary authority feels that for any special reasons the inquiry
B(27) should not be entrusted to a Commissioner for Departmental Inquiries, the disciplinary authority may approach the Central Vigilance Commission indicating the circumstances which would warrant an exception being made together with the name and designation of the officer proposed to be appointed as Inquiring Authority. If the Commission accepts the proposal of the disciplinary authority, the latter
E(3) may appoint an officer other than a C.D.I. as Inquiring Authority. The officer selected should be of sufficiently senior rank and one who is not suspected of any prejudice or bias against the accused officer and who did not have an occasion to express an opinion on the merits of the case at an earlier stage.

23.4. As soon as the disciplinary authority has decided upon the person who will conduct the oral inquiry, it will issue an order appointing him as the Inquiring Authority in the form given in Section E.

23.5. In order to expedite disposal of departmental inquiries being
B(125) conducted by the officers other than the CDIs, the Departments having a large number of inquiries pending should earmark some officers on a full-time basis to complete these inquiries within a specified time limit to be indicated by the disciplinary authority. The time limit should be

indicated as an administrative instructions having regard to the nature of the charges and the evidence involved. Similarly where part time Inquiry Officers are appointed, the disciplinary authority could, having regard to the nature of the charges and the evidence involved, specified time limit for the completion of the inquiry as an administrative instruction. The competent authority, with in its financial powers may consider sanction of suitable honorarium, where inquiries are not part of their sphere of duties to the Inquiry Officer subject to a minimum of Rs.250 and maximum of Rs.500. The amount payable on each occasion may be decided on merits taking into account the quality/volume of work and its quick and expeditious completion. B(37A)

24. Appointment of a Presenting Officer

24.1. the disciplinary authority which initiated the proceedings will also appoint simultaneously a Government servant or a legal practitioner as the Presenting Officer to present on its behalf the case in support of the articles of charge before the Inquiring Authority. Ordinarily a Government servant belonging to the departmental set up who is conversant with the case will be appointed as the Presenting Officer except in cases involving complicated points of law where it may be considered desirable to appoint a legal practitioner to present the case on behalf of the disciplinary authority. An officer who made the preliminary investigation or inquiry into the case should not be appointed as Presenting Officer.

24.2. While the disciplinary rules under which departmental inquiries are conducted against Central Government employees and Railway servants provide for the appointment of a Presenting Officer by the disciplinary authority to present its case before the Inquiring Authority, the disciplinary rules of certain public undertakings do not contain such a provision. As the appointment of a Presenting Officer would help in the satisfactory conduct of departmental inquiry, the Central Vigilance C(24)

Commission has advised that even in cases where the disciplinary rules do not contain a specific provision for the appointment of a Presenting Officers, the disciplinary authorities may consider appointing a Presenting Officer for presenting the case before the Inquiring Authority.

24.3 In cases in which the initiation of disciplinary action is the result of investigation made by the Special Police Establishment, the disciplinary authority will request the S.P.E. for a Presenting Officer. The formal appointment will be made by the disciplinary authority after the S.P.E. nominates an officer.

24.4. In order to expedite disposal of departmental inquiries, the competent authority within its financial powers may consider sanction of suitable honorarium, where inquires are not part of their sphere of duties, to the Presenting Officer subject to a minimum of Rs.100 and a maximum of Rs.300. The amount payable on each occasion may be decided on merits taking into account the quality/volume of work and its quick and expeditious completion.

(4)

25. Assistance to the charged Government servant in the presentation of his case

25.1. In the copy of the order appointing the Presenting Officer, endorsed to the Government servant concerned, he should be asked to finalise the selection of his Defence Assistance before the commencement of the proceedings. The Government servant may avail himself of the assistance of any other Government servant, as defined in rule 2 (h) of the CCS(CCA) Rules, posted in any office either at this headquarters or at the place where inquiry is held. The Government servant may take the assistance of any other Government servant posted at any other station if the inquiring authority having regard to the circumstances of the case and for reasons to be recorded in writing so permits.

25.2. If the Presenting Officer appointed by the disciplinary authority is a legal practitioner, the Government servant will be so informed by the disciplinary authority as soon as the Presenting Officer has been appointed so that the Government servant may, if he so desires, engage a legal practitioner to present the case on his behalf before the Inquiry Officer. The Government servant may not otherwise engage a legal practitioner unless the disciplinary authority, having regard to the circumstances of a case, so permits. If for example, the facts and the mass of evidence are very complicated and a layman will be at sea to understand the implications thereof and prepare a proper defence, the facility of a lawyer should be allowed as part of the reasonable opportunity. B(121)

25.3. When on behalf of the disciplinary authority, the case is being presented by a Prosecuting Officer of the Central Bureau of Investigation or by a Government Law Officer (such as Legal Adviser, Junior Legal Adviser), there are evidently good and sufficient circumstances for the disciplinary authority to exercise his discretion in favour of the delinquent officer and allow him to be represented by a legal practitioner. Any exercise of discretion to the contrary in such cases is likely to be held by the court as arbitrary and prejudicial to the defence of the delinquent Government servant. C(31)

B(97)

25.4. No permission is needed by the charged Government servant to secure the assistance of any other Government servant. The latter also is not required to take permission for assisting the accused Government servant. It will, however, be necessary for him to obtain the permission of his controlling authority to absent himself from office in order to assist the charged Government servant during the inquiry.

25.5. Government servants involved in disciplinary proceedings may also take the assistance of retired Government servants subject to the following conditions:-

(i) the retired Government servant concerned should have retired from service under the Central Government;

(ii) if the retired Government servant is also a legal practitioner, the restrictions on engaging a legal practitioner by a delinquent Government servant to present the case on his behalf, contained in Rule 14(8) of the C.C.S. (CCA) Rules, 1965 and paras 25.2. and 25.3 would apply;

(iii) the retired Government servant concerned should not have, in any manner, been associated with the case at investigation stage or otherwise in his official capacity.

(iv) For payment of travelling and other expenses, the retied Government servant will be deemed to belong to the Grade of Government servants to which he belonged immediately before his retirement. The expenditure on this account will be borne by the Department or office to which the delinquent Government servant belongs.

26. Documents to be forwarded to the Inquiry Officer

C(26) 26.1. As soon as the order of appointment of the Inquiry Officer is issued, the disciplinary authority will forward to him the following papers along with that order :-

C(41)

i) A copy of the articles of charge and the statement of imputations of misconduct or misbehavior;

ii) A copy of the written statement of defence submitted by the Government servant. If the charged Government servant has not submitted a written statement of defence, this fact should be clearly brought to the notice of the Inquiring Authority;

C(96)

iii) List of witnesses by whom the articles of charge are proposed to be sustained;

iv) A copy each of the statement of witnesses by whom the articles of charge are proposed to be sustained. In the case of common proceedings, the number of copies of the statements of witnesses should be as many as the number of accused Government servants covered by the inquiry;

v) List of documents by which the articles of charge are to be proved;

vi) A copy of the Covering Memorandum to the Articles of charge addressed to the Government servant concerned;

vii) Evidence proving the delivery of the documents to the Government servants. The date of receipt of the document by the charged officer should be clearly indicated. The date of receipt of the articles of charge by the Government servant will need to be taken into account by the Inquiring Authority in fixing the date of the first hearing;

viii) A copy of the order appointing the Presenting Officer;

ix) Bio-data of the officer in the prescribed form.

26.2. The above documents and all other relevant paper should be made available to the Presenting Officer at the earliest possible. If the Government servant has submitted a written statement of defence, the Presenting Officer will carefully examine it. If there are any facts which the Government servant has admitted in his statement, without admitting the charges, a list of such facts should be prepared by the Presenting C(124) (143)

Officer and brought to the notice of the Inquiry Officer at an appropriate stage of the proceedings so that it may not be necessary to lead any evidence to prove the facts which the Government servant has admitted (c.f. para 7.1 of Chapter XI).

26.3. Before referring a case to the Inquiry Officer the disciplinary
C(27) authorities may ensure that they are in possession of the listed documents. While forwarding the case to the Inquiry Officer, the disciplinary authorities may specifically mention that all the listed documents are available with them or with the presenting officer concerned.

27. Inquiries entrusted to the Commissioner for Departmental Inquiries against an officer under suspension

27.1 In inquiries in which a Commissioner for Departmental Inquiries of the Central Vigilance Commission is appointed as the Inquiring Authority against an officer who is under suspension, that fact should be specifically brought to the notice of the Commissioner for Departmental Inquiries indicating the date from which the officer has been under suspension so that the Commissioner for Departmental Inquiries may be able to give priority to such a case.

27.2. Similar intimation should be sent to Inquiry Officers other than CDIs as well, as this would enable them to accord priority to such cases.

28. Common Proceedings

28.1. Under Rule 18 of Classification, Control and Appeal Rules 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 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. Such an order should specify: -

i) the authority which may function as the disciplinary authority for the purpose of such common proceedings; E(4) & C(91)

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.

A standard form of the order is given in Section E.

B(36)

28.2. 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 9 of the CCS (Pension) Rules, 1972 and against the persons in service under Rule 14 of the CCA Rules. The oral inquiry against both of them could, however, be entrusted to the same Inquiring Authority.

28.3. A joint proceeding against the accused and accuser is an irregularity which should be avoided.

28.4. 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.

29. Special procedure in certain cases

29.1. Rule 19 of CCA Rules provides that notwithstanding anything contained in Rules 14 to 18 :-

i) where any penalty is proposed to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in the CCA Rules, or

iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in the CCA Rules the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit. The Union Public Service Commission will be consulted where such consultation is necessary before any order are made in any case under this rule.

29.2. In a case where a public servant has been convicted by a Court of Law of any penal offence but dealt with under Section 3 or 4 of the Probation of Offenders Act, 1958, he shall not suffer any disqualification because of the provisions of Section 12 of the Probation of Offenders Act, 1958 which reads as follows:-

"Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification if any, attaching to a conviction of an offence under such law.

Provided that nothing in the section shall apply to a person who, after his released under section 4, is subsequently sentenced for the original office".

The question whether action under Rule 19(1) of the CCA Rules can be taken against a Government servant, who though convicted by a Court of Law but is not to suffer any disqualification because he has been dealt with under Section 3 or 4 of the Probation of Offenders Act, has been considered in consultation with the Ministry of Law and on the basis of the Andhra Pradesh High Court's Judgement in A. Satyanarayana Murthy Vs. Zonal Manager, L.I.C. (AIR 69 A.P. 371). It has been decided that the order under Rule 19(i) of CCA Rules should be passed on the ground of conduct which led to the conviction of the Government servant and no because of the conviction, in view of Section 12 of the Probation of the Offenders Act. B(73) B(85)

29.3. In cases where an inquiry is to be dispensed with in the interest of the security of the State vide (iii) above, the order of the President should be obtained in such cases. For this purpose, it will be sufficient if the orders of the Minister-in-charge are obtained as the Supreme Court, in Shamsher Singh's Case (AIR 1974 SC 2192) have over ruled their earlier decision in the case of Sardari Lal Vs. The Union of India and others (Civil Appeal No.576 of 1969), under which each such case has to be submitted to the President, for orders. The Supreme Court has now clearly pointed out that the Rules of Business and the allocation among the Ministers of the said business, indicate that the rules of business made under Article 77 (3) in the case of President and Article 166 (3) in the case of Governor of the State is the decision of the President or the Governor respectively. In the said judgement it has been held that neither the President nor the Governor has to exercise the executive functions personally. It would thus, be clear that the requirement of proviso (c) to Article 311 (2) of the Constitution and Rule 19 (iii) of the CCS (CCA) Rules, 1965 would be satisfied if the matter is submitted to A(7)

the Minister-in-charge under the relevant rules of business and it receives the approval of the Minister.

30. Inquiry into charges against members of All India Services.

30.1. The All India Services (Discipline & Appeal) Rules, 1969 are to a great extent in conformity with CCS (CCA) Rules, 1965. Under Rule 7 of the All India Services (Discipline & Appeal) Rules, 1969, disciplinary proceedings can be initiated in cases of act or omission committed before the officer was appointed to the service by the Government under whom he is for the time being serving. In respect of an act or omission committed after appointment to the service, the Government under whom such member was serving at the time of the commission of such act or omission alone is competent to institute the disciplinary proceedings. The Government under whom he is serving at the time of the institution of the disciplinary proceedings shall be bound to render all reasonable facilities to the Government instituting and conducting such proceedings.

30.2. The Central and the State Governments have a concurrent jurisdiction to initiate proceedings in respect of members of All India Services. The State Governments are also competent to impose any of the penalties mentioned in Rule 6 except the penalty of dismissal, removal or compulsory retirement. These penalties can be imposed only by the Central Government. In cases where the State Government has conducted the disciplinary proceedings but is of the opinion that the penalty of dismissal, removal or compulsory retirement should be imposed, the State Government shall forward the records of the inquiry to the Central Government suggesting the imposition of these penalties. The Government may act on the evidence on record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, recall the witness and examine, cross examine and re-examine such witnesses. If the Central Government do not find

justification for imposing any of the penalties in a case referred to it by a State Government, the Central Government shall refer the case back to the State Government.

30.3. In cases where the disciplinary proceedings are initiated and conducted by the Central Government, the Central Vigilance Commission will be consulted at all appropriate stages as laid down in the instructions issued by the Commission from time to time. In cases where the proceedings are initiated and conducted by the State Governments but the final order is to be passed by the Central Government, the Central Government will consult the Central Vigilance Commission before passing the final order.

CHAPTER XI

DISCIPLINARY PROCEEDINGS - II
(Oral Enquiry)

1. Fixation of date and place of hearings

1.1 On receipt of the order of appointment and the documents enumerated in paragraph 26 of Chapter X, the Inquiry Officer will send a notice asking the Government servant to present himself before the Inquiry Officer at the appointed place, date and time, within 10 days. In the notice, the Government servant will also be asked to intimate to the Inquiry Officer, before the date fixed for the first hearing, the name of the Government servant or of the legal practitioner, as the case may be, who will be assisting him in the presentation of his case during the enquiry together with a copy of the permission, where necessary, of the disciplinary authority allowing him the assistance of a legal practitioner. The Inquiry Officer will also intimate the Presenting Officer in regard to the date, time and place of the preliminary hearing. The Presenting Officer will bring with him copies of the statements of the listed witnesses and the listed documents.

1.2 The first hearing will normally be fixed to be held within 10 working days from the date of receipt of the articles of charge by the Government servant. The period of 10 days may be extended by another 10 days by the Inquiry Officer at his discretion.

1.3 The date, time and venue of the next hearing will ordinarily be fixed by the Inquiry Officer and intimated to both parties or their representatives under their written acknowledgement before the adjournment of hearing. If the Inquiry Officer has to make a change in the date, time or venue of the next hearing for any reason, he will send a notice of the next hearing to all parties concerned sufficiently in advance.

C(31) 1.4 As soon as the accused Government servant informs the Inquiry Officer of the name and other particulars of the Government servant who has been chosen by him to assist in the presentation of his case, the Inquiry Officer will

intimate this fact to the controlling authority of the Assistant Government servant concerned. Further, the date and time of the hearing should be intimated to the said controlling authority sufficiently in advance adding that if, for any compelling reason, it is not practicable to relieve the Government servant concerned on the due date or dates to attend the inquiry, the Inquiry Officer, the accused official and the Government servant chosen for assistant the accused official may be advised well in advance.

2. First Hearing

2.1 If the Government servant, who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the Inquiry Officer at the first hearing, the Inquiry Officer will ask him whether he is guilty or has any defence to make. A(4)

2.2 If he pleads guilty to any of the articles of charge, the Inquiry Officer will record the plea, sign the record and obtain the signature of the Government servant thereon. The Inquiry Officer will then return a finding of guilt in respect of those articles of charges to which the Government servant pleads guilty. A(4)

2.3 If the Government servant fails to appear on the date and time fixed for the hearing or appears but refuses or omits to plead or pleads not guilty, the Inquiry Officer will ask the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge and will adjourn the case to a date not later than 30 days. The Inquiry Officer will also then send a programme of inquiry to the Central Vigilance Commission (in the case of Commissioners for Departmental Inquiries) and the Chief Vigilance Officer (in other cases), as the case may be.

2.4 The disciplinary authorities should be kept posted with the progress of oral enquiries. The Presenting Officer should send brief reports of the work done at the end of each hearing to the disciplinary authority in the prescribed proforma. C(34)

2.5 The accused public servant should be asked to indicate the documents,

out of the list of documents annexed to the charge-sheets whose authenticity and genuineness he does not dispute, in order to obviate the need to examine formal witnesses to prove such documents.

3. Inspection of documents by the Government servant

3.1 While adjourning the case, the Inquiry Officer will also record an order that the Government servant may, for the purpose of preparing his defence:

i) inspect, within 5 days of the order of within such further time not exceeding 5 days as the Inquiry Officer may allow, the documents mentioned in the list of documents sent to him with the articles of charge, and

ii) submit a list of witnesses to be examined on his behalf together with their full addresses, indicating what issues they will help in clarifying.

3.2 In the order referred to in paragraph 3.1 above, the Government servant will also be asked to apply within ten days of the date of the order or within such further time not exceeding 10 days as the Inquiry Officer may allow, for access to any documents which are in the possession of Government but are not mentioned in the list of documents sent to him with the articles of charge. While asking for such documents, the Government servant will also include the relevance of the documents to the presentation of his case.

3.3 On receipt of such request, the Inquiry Officer may, for reasons to be recorded by him in writing, refuse to requisition such of the documents as are, in his opinion, not relevant to the case. However, with regard to those documents, about the relevance of which he is satisfied, the Inquiry Officer will forward the request of the Government servant to the authority or authorities in whose custody or possession the documents are kept with a requisition for the production of such documents of document or a specified date.

3.4 On receipt of requisition from the Inquiry Officer, the authority having the custody of the requisitioned documents will produce them before the Inquirey Officer as the specific date. However, if the Head of Department is satisfied,

for reasons to be recorded by it in writing, that the production of all or any of the documents will be against the public interest or prejudicial to the security of the State, it will inform the Inquiry Officer accordingly and the Inquiry Officer will, on being so informed, communicate the information to the Government servant and withdraw the requisition made by it for the production or discovery of such documents.

3.5 Denial of access to documents which have a relevance to the case will amount to violation of the reasonable opportunity mentioned in Article 311 (2) of the Constitution. Access may not, therefore, be denied except on grounds of relevancy or in the public interest or in the interest of the security of the state. The question of relevancy has to be looked at from the point of view of the Government servant and if there is any possible line of defense to which the document may be in some way relevant, though the relevance is not clear at the time when the Government servant makes the request, the request should not be rejected. The power to deny access on the grounds of public interest or security of State should be exercised only when there are reasonable and sufficient grounds to believe that public interest or security of the State will clearly suffer. Such occasions should be rare.

3.6 The Ministry of Law have held that under the existing frame work of the rules, no authority other than the Head of Department can be said to have the custody or possession of documents of the Department, though such custody or possession may be "constructive". In the circumstances, a subordinate authority is not competent to claim privilege in respect of the requisitioned documents. The authority concerned should transmit the requisition to the Head of the Department for his decision and communicate the same to the inquiring Authority as soon as possible. The following may be cited as examples of documents, access to which may reasonably be denied :

i) Reports of a departmental officer appointed to hold a preliminary enquiry or the report of the preliminary investigation of SPE. - These reports are intended only for the disciplinary authority to satisfy himself whether departmental action should be taken against the Government servant or not and are treated as confidential documents. These reports are not presented before the Inquiry Officer and no reference to them is

made in the statement of allegations. If the accused officer makes a request for the production/inspection of the report of the Investigating Officer, S.P.E., the Inquiring Authority should, instead of dealing with it himself, pass on the same to the Disciplinary Authority concerned, who may claim 'privilege' of the same in "public interest" as envisaged in proviso to sub-rule (13) of Rule 14 of CCS (CCA) Rules, 1965.

ii) File dealing with the disciplinary case against the Government servant. - The preliminary enquiry report and the further stages in the disciplinary action against the Government are processed on this file. Such files are treated as confidential and access to them should be denied.

iii) Advice of the Central Vigilance Commission. - The advice tendered by the Central Vigilance Commission is of a confidential nature meant to assist the disciplinary authority and should not be shown to the Government servant.

iv) Character roll of the officer. - The CR of the official should not be shown to him.

A copy of the F.I.R. may be made available to the accused, if asked for. If report of preliminary enquiry is referred to in the article of charge or statement of allegations, it has to be made available to the accused Government servant.

3.7 On the date or dates fixed for the purpose, the accused Government servant and/or the official assisting the accused Government servant will be given facilities to examine the documents referred to in sub-paragraphs 3.1 (i) and 3.4 at such place as the Inquiry Officer may direct in the presence of the Presenting Officer or any other gazetted officer deputed for the purpose by the disciplinary authority or the other authority having the custody of the records. If the Government servant desires to keep notes or extracts, he should be allowed to do so without let or hindrance. The Presenting Officer or the officer in whose presence the documents are inspected by the Government servant will ensure that the documents are not tempered with by the Government servant during the course of inspection.

4. Supply of copies of documents to the Government servant

The CCA Rules do not provide for copies of documents being made available to the Government servant. The request of a Government servant to take photostate copies of the documents should not be acceded to as that would give a private photographer access to official documents which will not be desirable. However, if the documents of which photostat copies are asked for by the Government servant are considered by the Inquiry Officer to be vitally relevant to the case of the accused, for example, where the proof of the charge depends upon the proof of the hand-writing or where the authenticity of a document is disputed, Government servant should itself get photostat copies made and supply the same to the Government servant.

5. Documents held up in Courts

In respect of documents which are required for the enquiry but are held up in a court of law, the CBI will persuade the courts to part with the documents temporarily or will get photostat copies. Where the courts are not prepared to part with the documents and if the accused public servant insists on seeing the originals, the possibility of making arrangements for the accused to inspect the documents in the courts should be examined in consultation with the CBI.

6. Statement of witnesses

6.1 If at the first hearing the Government servant requests orally or applies in writing for copies of the statements of witnesses mentioned in the list sent to him with the articles of charge and by whom the articles of charge are proposed to be sustained, the Inquiry Officer will furnish him with copies thereof as early as possible but in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

6.2 The question whether statements made by the witnesses during the preliminary inquiry/investigation can be straightway taken on record as evidence

in examination-in-chief at oral inquiries has been examined by the Department of Personnel & AR. On considering the observations made by the Supreme Court in certain cases, it may be legally permissible and in accordance with the principles of natural justice to take on record the statements made by the witnesses during preliminary inquiry/investigation at oral inquiries, if the statement is admitted by the witness concerned on its being read out to him. By adopting this procedure, it should be possible to reduce the time taken in conducting departmental inquiries. Instead of recording the evidence of the prosecution witness, de novo, wherever it is possible, the statement of a witness already recorded at the preliminary inquiry/investigation may be read out to him at the oral inquiry and if it is admitted by him, the cross-examination of the witness may commence thereafter straightaway. A copy of the said statement should, however, be made available to the delinquent officer sufficiently in advance (at least 3 days) of the date on which it is to come up for inquiry. As regards the statement recorded by the Investigating officers of the CBI, which are not signed, the statement of the witness recorded by the Investigating Officer will be read out to him and a certificate will be recorded thereunder that it had been read out to the person concerned and has been accepted by him.

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7. Summoning of witnesses

7.1 Under Section 5(1) of the Departmental Inquiries (Enforcement of Attendance of the witnesses and Production of documents) Act, 1972 every Inquiring authority authorised under section 4 shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure in respect of summoning and enforcing the attendance of any witness and examining him on oath, requiring the production of any document or material which is producible as evidence, etc. Thus he has the power to enforce attendance and it is his duty to take all necessary steps to secure the attendance of both sides. While the accused public servant should be given the fullest facilities by the Inquiring Authority to defend himself and with that end in view, the witnesses which he proposes to examine should ordinarily be summoned by the Inquiring Authority, it is not obligatory for the Inquiring Authority to insist on the presence of all the witnesses cited by the accused public servant and to hold up proceedings until their attendance has been secured. The Inquiring Authority would be within his right to ascertain in advance from the accused public servant

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what evidence a particular witness is likely to give. If the Inquiring Authority is of the view that such evidence would be entirely irrelevant to the charge against the public servant and failure to secure the attendance of the witnesses would not prejudice defence, he should reject the request for summoning such a witness. In every case of rejection, the Inquiring Authority should record his reason in full for doing so. The inability to secure attendance of a witness will not vitiate the proceedings on the ground that the Government servant was denied the reasonable opportunity. The Supreme Court in the State of Bombay vs. Narul Latif Khan (AIR 1966 SC 269) have observed that if the accused officer desires to examine witnesses whose evidence appears to the Inquiry Officer to be thoroughly irrelevant, the Inquiry Officer may refuse to examine such witnesses but in doing so, he will have to record his special and sufficient reasons.

7.2 There can be no objection in principle in accepting the request of the public servant under enquiry to summon the Presenting Officer or his Assisting Officer as a defence witness, if in the opinion of the Inquiring Authority, their evidence will be relevant to the enquiry.

7.3 The notices addressed to the witnesses will be signed by the Inquiry Officer. Those addressed to witnesses who are Government servant will be sent to the Head of the Department/Office under whom the Government servant who is to appear as witness is working for the time being with the request that the Head of the Department/office will direct the Government servant to make it convenient to attend the enquiry and to tender evidence on the date and time fixed by the Inquiry Officer. Non-compliance with the request of the Inquiry Officer by the Government servant would be treated as conduct unbecoming of a Government servant and would make him liable for disciplinary action.

7.4 The notices addressed to non-official witnesses will be sent by registered post A.D. in cases emanating from the CBI, the notices addressed to non-official witnesses may be sent to the Superintendent of Police, SPE Branch concerned for delivery to the witnesses concerned. The Presenting Officer, on behalf of the disciplinary authority, with the assistance of the Investigating Officer will take suitable steps to secure the presence of the prosecution witnesses on the date fixed for their examination.

8. Production of documentary evidence on behalf of the disciplinary authority

8.1 On the date fixed for the inquiry, the Presenting Officer will be asked to lead the presentation of the case on behalf of the disciplinary authority. The Presenting Officer will draw the attention of the Inquiry Officer to facts admitted by the Government servant in his written statement of defence, if any, so that it may not be necessary to lead any evidence to prove such facts (vide para 26.2 of Chapter X).

8.2 The documentary evidence by which the articles of charge are proposed to be proved will then be produced by the officer having custody of documents or by an officer deputed by him for the purpose. The documents produced will be numbered as Ex S.1, Ex. S.2 and so on. The Presenting Officer should not produce the documents as in that event he places himself in the position of a witness and the accused officer may insist and cross-examining him.

9. Examination of witnesses on behalf of the disciplinary authority

9.1 The witnesses mentioned in the list of witnesses furnished to the Government servant with the articles of the charge will then be examined, one by one by or on behalf of the Presenting Officer. The witnesses may be numbered as SW 1, SW2 and so on. During the examination the Inquiry Officer may not allow putting of leading questions in a manner which will allow the very words to be put into the mouth of a witness which he can just echo back.

9.2 Rule 14 (14) of CCA Rules provides that the witnesses may be examined by or on behalf of the Presenting Officer. Absence of PO on any particular hearing would not necessarily imply postponment of hearing if an authorised person is present on behalf of the Presenting Officer. The substituted officer need not be formally appointed as Presenting Officer.

9.3 In complicated cases involving technical aspects, the Presenting Officers drawn from CBI are not sufficiently equipped to effectively cross-examine the defence witnesses. In such cases, it would be helpful to the Inquiry Officer as well as to the parties if the first prosecution witness to be called is an expert of B(67)

the Department concerned who may explain the background and various technicalities of the matter. The Presenting Officers should also consult the departmental experts and familiarise themselves with technical aspects of the matter before the inquiry commences as also before the cross-examination of the defence witnesses. The Ministries/Departments should extend necessary help and facilities to the Presenting Officers in consulting the departmental experts and obtaining their assistance on technical aspects of the case. The technical experts, however, should not assist the Presenting Officer during actual cross-examination.

10. Cross-examination

10.1 In departmental proceedings the rules of evidence laid down in the Evidence Act are, strictly speaking, not applicable and the Inquiry Officer, the Presenting Officer and the charged public servant are not expected to act like judges or lawyers. The right of the Government servant to cross-examine a witness who has given evidence against him in a departmental proceeding is, however, a safeguard implicit in the reasonable opportunity to be given to him under Article 311 (2).

10.2 The scope or mode of cross-examination in relation to the departmental enquiries have not been clearly set out anywhere. But there is no other variety of cross-examination except that envisaged under the Evidence Act. It follows, therefore, that the cross-examination in departmental enquiries should, as far as possible, conform to the accepted principles of cross-examination under the Evidence Act.

10.3 Cross-examination of a witness is the most efficaciaous method of discovering the truth and exposing false-hood. During the examination-in-chief the witness may say things favourable to the party on whose behalf he tenders evidence and may deliberately conceal facts which may constitute part of the opponent's case. The art of cross-examination lies in interrogating witness in a manner which would bring out the concealed truth.

10.4 Usually considerable latitude is allowed in cross-examination. It is not limited to matters upon which the witness has already been examined-in-chief,

but may extend to the whole case. The Inquiry Officer may not ordinarily interfere with the discretion of the cross-examiner in putting questions to the witness. However, a witness summoned merely to produce a document or a witness whose examination has been stopped by the Inquiry Officer before any material question has been put is not liable to cross-examination. It is also not permissible to put a question on the assumption that a fact was already proved. A question about any matter which the witness had no opportunity to know or on which he is not competent to speak may be disallowed. The Inquiry Officer may also disallow question if the cross-examination is of inordinate length or oppressive or if a question is irrelevant. It is the duty of the Inquiry Officer to see that the witness understands the question properly before giving an answer and of protecting him against any unfair treatment.

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11. Re-examination of witness

After cross-examination of witness by or on behalf of the Government servant, the Presenting Officer will be entitled to re-examine the witness on any points on which he has been cross-examined but not on any new matter without the leave of the Inquiring Authority. If the Presenting Officer has been allowed to re-examine a witness on any new matter not already covered by the earlier examiner/cross-examination, cross-examination on such new matter covered by the re-examination, may be allowed.

12. Examination of a witness by the Inquiry Officer

After the examination, cross-examination and re-examination of a witness, the Inquiry Officer may put such questions to the witness as he may think fit. Such a witness may be cross-examined by or on behalf of the Government servant with the leave of the Inquiry Officer on matters covered by the questions put by the Inquiry Officer.

13. Record of evidence

13.1 A typist will be deputed by the Inquiry Officer to type the depositions of the witnesses to the dictation of the Inquiry Officer.

13.2 The depositions of each witness will be taken down on a separate sheet of paper at the head of which will be entered the number of the case, the name of the witness and sufficient information as to his age, percentage and calling, etc., to identify him.

13.3 The depositions will generally be recorded as narration but on certain points it may be necessary to record the questions and answers in verbatim.

13.4 As evidence of each witness is completed, the Inquiry Officer will read the depositions, as typed, to the witness in the presence of the Government servant and/or legal practitioner or the Government servant assisting the delinquent officer in his defence. Verbal mistakes in the typed depositions, if any, will be corrected in their presence. However, if the witness denies the correctness of any part of the record, the Inquiry Officer may, instead of correcting the evidence, record the objection of the witness. The Inquiry Officer will record and sign the following certificate at the end of the depositions of each witness:-

"Read over the witness in the presence of the charged officer and admitted correct/objection of witness recorded".

13.5 The witness will be asked to sign every page of the depositions. The charged officer, when he examines himself as the defence witness, should also be required to sign his depositions. If a witness refuses to sign the deposition, the Inquiry Officer will record this fact and append his signature. The documents exhibited and the depositions of witness will be kept in separate folders.

13.6 If a witness deposes in a language other than English but the depositions are recorded in English, a translation in the language in which the witness deposed should be read to the witness by the Inquiry Officer. The Inquiry Officer will also record a certificate that the depositions were translated and explained to the witness in the language in which the witness deposed.

13.7 Copies of the depositions will be made available at the close of the

inquiry each day to the Presenting Officer as well as to the delinquent officer.

14. Appearance of officers of Audit/Accounts Departments before the Inquiry Officer

It will not ordinarily be necessary to require the appearance of officials of the Audit/Accounts Office before the Inquiry Officer to prove the figures of salaries/allowances of a Government servant furnished over the signature of a responsible officer of the Audit/Accounts Department. No particular officer of the Audit/Accounts Office would be in a position to prove the correctness of numerous entries in a register made by various persons over a length of period. Figure of salaries/allowances will generally be relevant in cases where the charge relates to disproportionate assets. In such cases the Investigating Officer would have satisfied himself about the correctness of the figures collected by him from Audit/Accounts Office and would have got the figure inspected by the Government servant. Cases in which the Government servant may question the correctness of the figures furnished by the Audit/Accounts Officer will thus be rare. In any case where the Government servant does so, he will also indicate the figures which are not acceptable to him which would be got verified again by the Presenting Officer from the Audit/Accounts Office. In any case where the figures of salary and allowances are disputed, the dispute cannot be settled by merely requiring the presence of the Accounts/Audit Officer. Therefore, normally an authenticated statement of pay and allowances furnished by the Audit/Accounts Officer concerned should be produced before the Inquirying Authority as sufficient proof of the correct amount drawn as salary and allowances by the Government servant.

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15. Admission of additional evidence on behalf of Disciplinary Authority

15.1 Before the close of the case on behalf of the disciplinary authority, the Inquiry Officer may, in his discretion, allow the presenting Officer to produce new oral or documentary evidence not included in the lists of documents and witnesses given to the Government servant with the articles of charge. In such a case the Government servant will be entitled to have, if, he demands it, a copy of the list of further documents proposed to be produced and an adjourn-

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ment of the inquiry for three clear days before the production of such new evidence exclusive of the date of adjournment and the date to which the enquiry is adjourned. The Inquiry Officer will also give the Government servant an opportunity of inspecting such documents before they are taken on the record.

15.2 The Inquiry Officer may also, at his discretion, permit the Presenting Officer, to recall and re-examine any witness. In such a case the Government servant will be entitled to cross-examine such witness again on any point on which that witness has been re-examined.

15.3 The production of further evidence and/or re-examination of a witness will not be permitted to fill up any gap in the evidence but only when there is an inherent lacuna or defect in the evidence which had been produced originally. The Presenting Officer should, therefore, when he finds that there is any lacuna or defect in the evidence and that fresh evidence to remove the defect or lacuna is available or that the position can be clarified by recalling a witness, make an application to the Inquiry officer to the effect.

16. Statement of defence

16.1 After the closure of the case for the disciplinary Authority, the Inquirying Authority will ask the Government servant to state his defence orally or in writing, as he may prefer. If the defence is made orally, it will be recorded and the Government servant will be required to sign the record. If he submits his defence in writing, every page of it should be signed by him. In either case a copy of the statement of defence will be given to the Presenting Officer in the absence of the delinquent officer, his Assisting Officer can state the defence case, if he holds an authorisation to this effect from the delinquent officer.

16.2 Rule 14 (16) of the C.C.A. Rules, 1965 provides that "when the case for the disciplinary authority is closed, the Government servant shall be required to state his defence ……" In regard to the use of the word, 'shall' in Sub-Rule (16), a question arises whether the Inquiring Authority can waive the provision of this sub-rule and proceed with the case even though the delinquent officer has not submitted his defence. A reasonable interpretation of this sub-rule is that the delinquent Government servant shall be formally called

upon to state his defence, but it is up to him to make or not to make a statement and the Inquiring Authority obviously cannot compel him to state his defence, if he does not wish to do so.

17. Production of evidence on behalf of the Government servant

17.1 The defence witnesses summoned by the Inquiry Officer will then be produced on his behalf one by one. The documents produced by the defence will be numbered Ex. D.1, Ex. D.2 and so on and the witnesses who give oral evidence will be numbered as D.W. 1, D.W. 2 and so on.

17.2 Each witness will be examined by the Government servant or on his behalf by the legal practitioner or by the Government servant assisting him in his defence, as the case may be. The witness may be cross-examined by the Presenting Officer and may then be re-examined by or on behalf of the Government servant on any points on which the witness has been cross examined, but not on any new matter without the leave of the Inquiry Officer. If the Presenting Officer is unable to attend the hearing for any reason, another officer may be deputed for the purpose of cross-examination. Intimation about such officer should be sent to the Inquiry Officer in advance, After the examination and cross-examination and re-examination of a witness, the Inquiry Officer may also put such questions to him as he may think fit. In that event the witness may be re-examined by the Government servant or the asserting Government servant and cross-examined by or on behalf of the Presenting Officer with the leave of the Inquiry officer on matters covered by the questions put by the Inquiry Officer.

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17.3 The Government servant may offer himself as his own witness. In that case he may allow himself to be examined by his legal counsel or the Government servant assisting him in his defence, as the case may be, or he may make a statement as a witness. In such a case the Government servant will be liable to cross-examination by or on behalf of the Presenting Officer and examination by the Inquiring Authority in the same way as other witnesses. If the Government servant does not offer himself as his own witness, this fact may not be relied upon by the Presenting Officer to deduce therefrom the guilt of the accused in any way.

17.4 The defence witnesses will be examined, cross-examined and re-examined in the same manner as the witnesses produced on behalf of the disciplinary authority and a record of their depositions will be made and signed and made available to the parties concerned in the same way as described in paragraphs 9 to 13 above.

17.5 If in any particular hearing, the accused officer is unable to come for any reason, his Assisting Officer can proceed with the case if he has authorisation to this effect from the accused officer. Similarly, the Assisting Officer can submit the defence of the delinquent officer contemplated in Rule 14 (16) of the CCS (CCA) Rules, 1965, if he holds authorisation to this effect from the delinquent officer.

17.6 If the delinquent officer wants to examine the Presenting Officer as a defence witness, there can be no objection in principle in accepting the request of the delinquent officer. Such a witness cannot, of course, function simultaneously as a Presenting Officer while deposing as a defence witness. But there can be no objection to his arguing the case at a later stage on behalf of the disciplinary authority. When the Presenting Officer is appearing as a defence witness, another officer can be appointed under Rule 14 (14) of the CCS (CCA) Rules, 1965 to cross-examine him as a defence witness.

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18. Production of fresh witness on behalf of the Government servant

Before the close of the case on his behalf, the Government servant may request for permission to produce a witness who was not included in the list of witnesses furnished by him vide para 3.1 (ii) above for tendering further oral evidence or producing any further documents and the Inquiry Officer may permit the production of such new witness if, in the opinion of the Inquiry Officer, it is necessary in the interest of justice. As stated in para 15 in relation to the production of fresh evidence on behalf of the disciplinary authority, such new witness on behalf of the Government servant will be permitted only if there is an inherent lacuna or defect in the evidence which had been pro-

duced originally and not to fill any gap in the evidence.

19. Examination of the Government servant by the Inquiry Officer after his case is closed

It has already been indicated in para 17.3 that the Government servant can, if he so chooses, offer himself as a witness. If he is examined as a witness, it is for the Inquiry Officer to decide whether he should question him generally for the purpose of enabling him to explain any circumstances appearing in the
A(4) evidence against him. But if the Government servant does not offer himself as a witness, the Inquiry Officer must question him generally for the purpose stated above. It may be noted that the Presenting Officer would not be entitled to examine the official at this stage.

20. Final hearing

After the completion of the production of evidence on both sides, the Inquiry Officer may hear the Presenting Officer and the Government servant or permit them to file written briefs of their respective case, if they so desire. It will be observed from the phraseology of Rule 14(19) of the CCA Rules, 1965 that the Inquiring Authority has to hear arguments that may be advanced by the parties after their evidence has been closed. But, he can, on his own or on the desire of the parties, take written briefs. In case he exercises the discretion of taking written briefs, it will be but fair that he should first take the brief from the Presenting Officer, supply a copy of the same to the Government servant and then take the brief in reply from the Government servant. In case the copy of the brief of the Presenting Officer is not given to the Government servant, it will be tantamount to hear arguments of the Presenting Officer at the back of the Government servant. [Judgement of the Calcutta High Court in the Collector of Customs Vs. Mohgd. Habibul SLR 1973 (i) Calcutta 321]. It is laid down therein that the requirement of Rule 14(19) of the CCA Rules, 1965 and the principles of natural justice demand that the delinquent officer should be served with a copy of the written brief filed by the Presenting Officer before he is called upon to file his written brief.

21. Requests and representations etc. during the enquiry

21.1 Sometimes allegations are made that a request or representation was made but the Inquiring Authority did not consider the same. In order to avoid such complaints the Inquiring Authority should record a note in the Daily Order Sheet on the very day stating the gist of the request of representation made and the orders passeed thereon. Such notes should form part of the record of the inquiry.

21.2 If the Government servant alleges bias against the inquiring authority, the inquiring authority should keep the proceedings in abeyance and refer the matter to the disciplinary authority. He should resume the inquiry only after he is advised by the disciplinary authority to go ahead with the inquiry. In case the Government servant moves the application to the appellate authority against the appointment of a particular inquiring authority, the proceedings should be stopped and the application, along with other relevant material, be referred to the appropriate appellate authority for consideration and appropriate orders.

22. Daily Order Sheet

The Inquiry Authority should maintain Daily Order Sheet for each case in which the business transacted on each day of hearing should be recorded in brief. Requests and representations made by either party should also be dealt with and disposed of in the sheet. Copies of the recorded order-sheets will be given to the P.O. and the Government servant with their signatures thereon, if they are present. If they are not present, these will be sent by post.

23. General principles

23.1 The provision of the Indian Evidence Act and the Criminal Procedure Code are not applicable to the departmental enquiries. The spirit of these enactments should, however, be followed in departmental enquiries. The In-

quiry Officer should afford reasonable opportunity to both sides to present their respective cases including full opportunity for cross-examining witnesses.

23.2 In Gabrial vs. State of Madras, the Madras High Court set out the requirements of an enquiry in the following terms:-

> "All enquiries, judicial, departmental or other, into the conduct of individuals must conform to certain standards. One is that the person proceeded against must be given a fair and reasonable opportunity to defend himself. Another is that the person charged with the duty of holding the enquiry must discharge that duty without bias and certainly without vindictiveness. He must conduct himself objectively and dispassionately not merely during the procedural stages of enquiry, but also in dealing with the evidence and the material on record when drawing up the final order. A further requirement is that the conclusion must be rested on the evidence and not on matters outside the record. And, when it is said that the conclusion must be vested on the evidence, it goes without saying that it must be based on a misreading of the evidence. These requirements are basic and cannot be whittled down, whatever be the nature of the inquiry, whether it be judicial, departmental or other".

23.3 In the State of Uttar Pradesh vs. Mahmood, it was held that if an Inquiry Officer puts on record his own testimony as against that of any other witness, such an Inquiry Officer becomes disqualified to hold the further proceedings. The Inquiry Officer cannot rely on his own evidence. An Inquiry Officer cannot both be a judge and a witness. That will be contrary to the principles of natural justice.

23.4 Disproportionate assets case - In disciplinary proceedings a presumption of corruption fairly and reasonably arises against an officer who cannot account for his wealth disproportionate to his known sources of income and accordingly, the Inquiry Officer can hold that such assets were amassed by the Government servant in a corrupt way.

23.5 Affidavits in departmental enquiries - Evidence in the form of affidavits, cannot be ruled out in departmental proceedings. At the same time, it cannot

be taken as conclusive. The person swearing to the affidavit may be called for cross-examination and the value to the attached to an affidavit should be decided in each case on merits on the basis of the totality of evidence including the results of the cross-examination etc.

23.6 Amendment to the charge-sheet - During the course of enquiry, if it appears necessary to amend the charge-sheet, it is permissible to do so provided that a fresh opportunity be given to the accused public servant in respect of amended charge-sheet. The Inquiry Officer may hold the enquiry again from the stage considered necessary so that the accused public servant should have a reasonable opportunity to submit his defence or produce his witnesses in respect of amended charge-sheet. If, however, there is a major change in the charge-sheet, it would be desirable to draw fresh proceedings on the basis of the amended charge-sheet.

23.7 The emphasis in Departmental Enquiries is heavily on facts. Whatever the Inquiry Officer does should be "lawful" , but it should not be "legalistic". The legal principles with which Inquiring Authorities are primarily concerned are only the principles of natural justice.

23.8 The laws or procedures are also relaxed in so far as Departmental Inquiries are concerned. The provisions of the Indian Evidence Act and Criminal Procedure Code except in so far as they relate to the general principles of natural justice are not applicable to the Departmental Enquiries (State of Orissa vs. Murlidhar Jana AIR 1963 S.C. 404)

23.9 The standard of proof required in a departmental oral inquiry differs materially from the standard of proof required in a criminal trial. The Supreme Court has given clear rulings to the effect that a disciplinary proceedings is not a criminal trial and that the standard of proof required in a disciplinary enquiry is that of preponderance of probability and not proof beyond a reasonable doubt (Union of India vs. Sardar Bahadur - SLR 1972-p. 355 State of A.P. vs. Sree Rama Rao-SLR 194-p. 25 and Nand Kishore Prasad Vs. State of Bihar and others - SLR- 1978-p.46) A(4)

24. Ex-parte proceedings

24.1 If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the Inquiry Officer or otherwise fails or refuses to comply with the provisions of the C.C.A. Rules, the Inquiry Officer may hold the inquiry ex parte. If the Government servant does not take advantage of the opportunity given to him to explain any facts or circumstances which appear against him he has only to blame himself and the Inquiry Officer has no choice but to proceed ex parte. But if a Government servant under suspension pleads his inability to attend the inquiry on account of financial stringency caused by the non-payment of subsistence allowance to him, the proceedings conducted against him ex-parte would be violative of the provisions of Article 311 (2) of the Constitution as the person concerned did not receive a reasonable opportunity of defending himself in the disciplinary proceedings. (Supreme Court's observation in the case of Ghan Shyam Das Srivastava vs. State of Madhya Pradesh - AIR 1973 SC 1183). Therefore, in cases where recourse to ex-parte proceeding becomes necessary, it should be checked up and confirmed that the Government servant's inability to attend the inquiry is not because of non-payment of subsistence allowance.

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24.2 In an ex-parte proceeding the full enquiry has to be held i.e., the Presenting Officer will produce documentary evidence and witnesses in the manner outlined in paragraphs 8 to 15 above. Notice of each hearing should be sent to the Government servant also.

24.3 However, if it is not possible to trace the Government servant and serve the charges on him, the disciplinary authority may take recourse to Rule 19 (ii) and finalise the proceeding after dispensing with the inquiry on the ground that it is not reasonably practicable to hold one.

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25. Part-heard inquiries

25.1 If an Inquiry Officer after having heard and recorded the whole or any part of the evidence in an enquiry ceases to function as Inquiry Officer for any reason, and a new officer is appointed as Inquiry officer for conducting the

inquiry, the new Inquiry Officer in his discretion may proceed with the enquiry de novo, or from the stage left by the predecessor and act on the evidence already recorded by his predecessor or the evidence partly recorded by his predecessor and partly recorded by him, depending upon the stage at which the previous Inquiry Officer ceased to function.

25.2 However, if the new Inquiry Officer is of the opinion that a further or a fresh examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, he may recall the witness or witnesses for examination, cross-examination and re-examination in the manner described in paragraphs 9-12.

25.3 A standard form for the appointment of new Inquiring Authority is given in Appendix E(34).

26. Report of the Inquiry Officer

26.1 An oral inquiry is held to ascertain the truth or otherwise of the allegations and is intended to serve the basis on which the disciplinary authority has to take a decision as to whether or not the imposition of any penalty on the Government servant is called for.

26.2 The findings of the Inquiry Officer must be based on evidence adduced during the enquiry. While the assessment of documentary evidence should not present much difficulty, to evaluate oral testimony, the evidence has to be taken and weighed together, including not only what was said and who said it, but also when and in what circumstances it was said, and also whether what was said and done by all concerned was consistent with the normal probabilities of human behaviour. The Inquiry Officer who actually records the oral testimony is in the best position to observe the demenour of a witness and to form a judgement as to his credibility. Taking into consideration all the circumstances and facts the Inquiry Officer as a rational and prudent man has to draw inferences and to record his reasoned conclusion as to whether the charges are proved or not.

26.3 The Inquiring Authority should take particular care while giving its find-

ings on the charges to see that no part of the evidence which the accused Government servant was not given an opportunity to refute, examine or rebut has been relied on against him. No material from personal knowledge of the Inquiring Authority having a bearing on the facts of the case which has not appeared either in the articles of charge or the statement of allegations or in the evidence adduced at the inquiry and against which the accused Government servant has had no opportunity to defend himself should be imported into the case.

26. The report of the Inquiry Officer should contain:-

i) an introductory paragraph in which reference will be made about the appointment of the Inquiry Officer and the dates on which and the places where the inquiry was held;
ii) charges that were framed;
iii) charges which were admitted or dropped or not pressed, if any;
iv) charges that were actually enquired into;
v) brief statement of facts and documents which have been admitted;
vi) brief statement of the case of the disciplinary authority in respect of the charges enquired into;
vii) brief statement of the defence;
viii) points for determination;
ix) assessment of the evidence in respect of each point set out for determination and finding thereon;
x) finding on each article of charge;
xi) a folder containing :-

a) list of exhibits produced in proof of the articles of charge;
b) list of exhibits produced by the delinquent officer in his defence;
c) list of witnesses examined in proof of the charges;
d) list of defence witnesses;

xii) a folder containing depositions of witnesses arranged in the order in which they were examined;
xiii) a folder containing daily order sheet;

xiv) a folder containing written statement of defence, if any, written briefs filed by both sides, application, if any, made in the course of the inquiry with orders thereon and orders passed on any request or representation made orally.

26.5 If in the opinion of the Inquiry Officer the proceedings of the inquiry establish an article of charge different from original articles of charge, he may record his findings on such article of charge. The findings on such article of charge will not, however, be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity during the course of the enquiry of defending himself against such article of charge.

26.6 The Inquiry Officer will forward to the disciplinary authority his report together with the record of the enquiry including the exhibits and spare copies of the report as follows:-

i) as many copies as the number of the accused;
ii) one copy for the Special Police Establishment in cases investigated by them.

26.7 The Inquiry Officer after signing the report becomes functus officio and cannot thereafter make any modification in the report.

26.8 In all cases in which the inquiry has been held by a Commissioner for Departmental Inquiries, the report, together with the record of the inquiry including the exhibits, will be forwarded by the Commissioner for Departmental Inquiries to the Central Vigilance Commission with spare copies of the report as follows:- C(1) C(4)

i) as many copies as the number of the accused plus one copy of the disciplinary authority;
ii) one copy for the SPE in cases investigated by them.

The Central Vigilance Commission will forward the required number of copies of the report and the accompanying papers to the disciplinary authority, together with its advice, regarding the further course of action.

26.9 In cases relating to gazetted and other category 'A' officers (Please see para 3.1.1 Chapter II) where an officer other than a Commissioner for Departmental Inquiries has been appointed as Inquiry Officer (vide para 23.3 of Chapter X), the report of the Inquiry Officer together with the accompanying documents and other papers will be sent to the Central Vigilance Commission. The Commission will advise the disciplinary authority about the further course of action.

27. Stay of disciplinary proceedings under the order of the Court

The question of stay or adjournment of oral inquiries in disciplinary proceedings conducted by the Inquiring Authorities, when the delinquent officer goes to a court of law has been considered in consultation with the Ministry of Law. The proceedings need not be adjourned or stayed in the following circumstances :-

a) On receipt of notice under Section 80 of Civil Procedure Code;
b) On receipt of intimation that the impugned officer proposes to file a writ petition;
c) On receipt of a mere show cause notice (or Role NISI) from a court asking :-

   i) why the petition should not be admitted; or
   ii) why the proceedings pending before Disciplinary Authority/Inquiring Authority should not be stayed; or
   iii) why a writ or an order should not be issued?

The proceedings should, however, be stayed only when a court of competent jurisdiction issues an injunction or clear order staying the same.

CHAPTER XII

DISCIPLINARY PROCEEDINGS III

(ACTION ON REPORT OF THE INQUIRING AUTHORITY)

1. FINDINGS OF THE DISLCIPLINARY AUTHORITY

A(4) 1.1. The report of the Inquiring Authority is intended to assist the disciplinary authority in coming to a conclusion about the guilt of the Government servant. Its findings are not binding on the disciplinary authority who can disagree with them and come to its own conclusion on the basis of its own assessment of the evidence forming part of the record of the enquiry.

1.2. On receipt of the report and the record of the enquiry the disciplinary authority, if it is different from inquiring authority, will forward a copy of the inquiry report to the Government servant concerned, giving him an opportunity to make any representation or submission with the following endorsement:-

> "The report of the Inquiry Officer is enclosed. The disciplinary Authority will take a 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."

1.3. On receipt of his reply, or if no reply is received within the time allowed, the disciplinary authority will examine the report and record of the inquiry, including the points raised by the concerned Government servant carefully and dispassionately and after satisfying itself that the Government servant has been given a reasonable opportunity to defend himself, will record its findings in respect of each article of charge saying

whether, in its opinion, it stands proved or not.

1.4. If the disciplinary authority disagrees with the findings of the Inquiring Authority on any article of charge, it will, while recording its own findings, also record reasons for its disagreement.

2. Further enquiry

A(4) If the disciplinary authority considers that a clear finding is not possible or that there is any defect in the enquiry, e.g., the Inquiring Authority had taken into consideration certain factors without giving the delinquent officer an opportunity to defend himself in that regard, the disciplinary authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for further inquiry and report. The Inquiring Authority will, thereupon, proceed to hold the further inquiry according to the provisions of Rule 14 of the CCA Rules, as far as may be.

3. Further enquiry when Principles of Natural Justice have not been observed

3.1. If the disciplinary authority comes to the conclusion that the inquiry was not made in conformity with principles of natural justice, it can also remit the case for further enquiry on all or some of the charges.

3.2. The discretion in this regard should be exercised by the disciplinary authority for adequate reasons to be recorded in writing. A further enquiry may be ordered, for example, when there are grave lacunae or procedural defects vitiating the first enquiry and not because the first enquiry had gone in favour of the delinquent officer. In latter type of cases, the disciplinary authority can, if it is satisfied on the evidence on record, disagree with the findings of the Inquiring Authority.

3.3. In this context the following observations of the Rajasthan High Court in Dwarka Chand Vs. State of Rajasthan (AIR 1959, Raj. 38) are relevant:-

> "If we were to hold that a second departmental enquiry 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 enquiry, then 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 enquiry after the earlier ones had resulted in the exoneration of a public servant."

4. Action when articles of charge are held as not proved.

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 Government servant should be exonerated, it will make an order to that effect and communicate it to the Government servant together with a copy of the report of the Inquiring authority if it has not been given to him earlier), its own findings on it and brief reasons for disagreement, if any, with the findings of the Inquiring Authority. A(4)

5. Imposition of a minor penalty

5.1. If the disciplinary authority is of the opinion that any of the minor penalties should be imposed on the Government servant, it is not necessary to give any further show cause notice to the Government servant in such cases in the interest of natural justice or otherwise. A(4)

5.2. If the disciplinary proceedings had been instituted by a higher authority competent to impose a major penalty and on receipt of the report of the Inquiring Authority, it appears that a minor penalty will B(34)

meet the ends of justice, the final order imposing a minor penalty should be passed by the same higher disciplinary authority which had initiated the proceedings and not by the lower disciplinary authority though he may be competent to impose a minor penalty.

5.3. If the Government servant is one whose services had been borrowed by one Department from another Department or from a State Government or an authority subordinate thereto or a local or other authority, the disciplinary authority will make an order imposing a minor penalty after consultation with the lending authority. In the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government servant will be replaced at the disposal of the lending authority.

5.4. In a case in which it is necessary to consult the Union Public Service Commission, the disciplinary authority will forward the record of the enquiry to the Union Public Service Commission for its advice and will take the advice of that Commission into consideration before making an order imposing a minor penalty. (See Chapter XVI).

6. Action when proceedings in which a major penalty is proposed were initiated by an authority competent to impose minor penalty.

A(4) 6.1. If the disciplinary proceedings were instituted by an authority competent to impose any of the minor penalties but not competent to impose a major penalty and if such authority is of the opinion that any of the major penalties should be imposed on the Government servant, it will forward the record of the enquiry to the authority competent to impose a major penalty who will take further action.

6.2. If the disciplinary authority to which the records are so forwarded is of the opinion that a further examination of any witness is necessary in the interest of justice, if may recall the witness and examine, cross-examine

and re-examine the witness and may then take action for the imposition of such penalty as it may deem fit.

7. Consultation with the Union Public Service Commission.

In cases in which it is necessary to consult the UPSC, the record of the enquiry, together with relevant documents will be forwarded by the disciplinary authority to the Commission for advice (c.f. Chapter XVI).

8. Final Order on the Report of Inquiring Authority

8.1. It is in the public interest as well as in the interest of the employees that disciplinary proceedings should be dealt with expeditiously. At the same time, the disciplinary authorities must apply their mind to all relevant facts which are brought out in the enquiry before forming an opinion about the imposition of a penalty, if any, on the Government servant. In cases which do not require consultation with the Central Vigilance Commission or the UPSC, it should normally be possible for the disciplinary authority to take a final decision on the enquiry report within a period of 3 months at the most. In cases where the disciplinary authority feels that it is not possible to adhere to this time limit, a report may be submitted by him to the next higher authority indicating the additional period within which the case is likely to be disposed of and the reasons for the same. In cases where consultation with the UPSC and the CVC is required, every effort should be made to ensure that such cases are disposed of as quickly as possible. B(70)

8.2. After considering the advice of the UPSC, where the UPSC is consulted, the disciplinary authority will decide whether the Government servant should be exonerated or whether a penalty should be imposed upon him and will make an order accordingly.

In para 11.2 of Chapter X it has been indicated that the disciplinary authority could after receiving the enquiry report in cases initiated under Rule 14 impose a minor penalty also.

8.3. In every case in which the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty of removal or dismissal should be imposed. The disciplinary authority may, however, impose any other punishment in any exceptional case and for special reasons to be recorded in writing.

A(4)

8.4. In determining the quantum of punishment, the disciplinary authority should take into account only that material which the Government servant had the opportunity to rebut. The object is to ensure that no material of which the Government servant was not given prior notice and which he was not given adequate opportunity of rebutting or defending himself against should be taken into account for deciding the extent of punishment to be awarded.

8.5. The order should be signed by the disciplinary authority competent to impose the penalty. In a case in which the competent authority is the President, the order should be signed by an officer authorised to authenticate order issued in the name of the President under Article 77(2) of the constitution.

B(113)

B(16)

8.6. The Central Vigilance Commission tenders its advice in confidence and its advice is a privileged communication. No reference to the advice tendered by the Commission should, therefore, be made in any formal order.

8.7. It may happen that a charged public servant may go to a court of law either during the currency of the disciplinary proceedings or on their completion, pleading inter alia that a copy of the advice tendered

by the Central Vigilance Commission to the disciplinary authority had not been made available to him and, therefore, the rules of natural justice were violated. In such cases, the Commission should be consulted and it would advice the disciplinary authority in regard to the drafting of the affidavit in opposition mainly with reference to the matters dealt with in the course of hearing before the Commissioner for Departmental Inquiries, about procedural aspects of departmental inquiries or advice tendered by it on the report of the Commissioner for Departmental Inquiries. The Supreme Court in CA No.1277 of 1975- Sunil Kumar Banerji Vs. State of West Bengal and others have held inter alia that the disciplinary authority could consult the Vigilance Commission and that it was not necessary for the disciplinary authority to furnish the charged officer with a copy of the Commission's advice. This may also be kept in view for contesting cases of the type mentioned in the previous paragraph. C(56) C(145)

9. Communication of order

9.1. The order made by the disciplinary authority will be communicated to the Government servant together with:- A(4)

a) a copy of the report of the Inquiring Authority, if not supplied already;

b) a statement of findings of the disciplinary authority on the inquiring authority's report together with brief reasons for its disagreement, if any, with the findings of the Inquiring Authority, if not supplied already;

c) a copy of the advice, if any, given by the UPSC and where the disciplinary authority has not accepted the advice of the UPSC a brief statement of the reasons for such non-acceptance.

9.2. A copy of the order will also be sent to :-

(i) the Central Vigilance Commission in cases in which the Commission had given advice;

(ii) the UPSC in cases in which they had been consulted;

(iii) to the Head of Department or office where the Government servant is employed for the time being unless the disciplinary authority itself is the Head of the Department or office; and

(iv) The SPE in cases mentioned in para.

10. Imposition of a major penalty on a Government Servant whose services have been borrowed from or let to another department, State Government etc.

A(4) In respect of a Government servant whose services have been borrowed by one department from another from a State Government or an authority subordinate thereto or a local or other authority if in the light of the findings in the disciplinary proceedings conducted against him the borrowing authority at whose instance the proceedings were instituted is of the opinion that any of the major penalties should be imposed on the Government servant it will replace the services of such Government servant at the disposal of the lending authority and transmit to it the proceedings of the enquiry for such action as it may deem necessary. The lending authority may, if it is also the disciplinary authority, pass such orders thereon as it may deem necessary, or if it is not the disciplinary authority submit the case to disciplinary authority which will pass such order as on the case as it may deem necessary. The disciplinary authority may make an order on the basis of record of the enquiry transmitted to it by the borrowing authority or after holding such further enquiry, as it may deem necessary.

11. Supply of papers to the Special Police Establishment.

In all cases where disciplinary action was initiated on the basis of a report received from the SPE the following documents should be made available to the SPE soon after a final decision has been taken by the disciplinary authority:- C(28)

a) a copy of the report of the inquiring authority and a statement of the findings of the disciplinary authority together with brief reasons for its disagreement, if any, with the findings of the inquiring authority;

b) a copy of the advice, if any, given by the UPSC and where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance; and

c) orders passed by the disciplinary authority.

12. Scope of order of punishment

When passing an order of punishment, the disciplinary authority should define the scope of the punishment in clear terms. It should be self-contained and in the nature of a reasoned "speaking" order.

B(113)

13. Withholding of promotion

13.1. An order of punishment withholding a Government servant's promotion should clearly state the period for which the promotion is withheld. The order will debar him from being considered for promotion during that period, whatever be his seniority, merit or ability.

13.2. Promotion could be withheld permanently. The imposition of

a punishment of a permanent nature should, however, be avoided as far as possible as it is destructive of incentive for good work and improvement.

14. Recovery of pecuniary loss from pay of a Government servant

The penalty of recovery of pecuniary loss caused to Government from the pay of a Government servant should be imposed only when it has been established that the Government servant was directly responsible for a particular act or acts of negligence or breach of orders or rules which caused the loss. When ordering such recovery the disciplinary authority should clearly state as to how exactly the negligence was responsible for the loss. The order should also specify the number and amount of instalments in which recovery to be made. The amount of the instalment should be commensurate with the capacity of the Government servant to pay.

15. Withholding of increments

When ordering the withholding of an increment the disciplinary authority should give the period for which increment is withheld and whether the withholding will have the effect of postponing future increments.

16. Reduction to a lower stage in the time scale of pay for a specified period.

Reduction to a lower state in the time scale of pay can be ordered for a specified period only. In compliance with the requirements of Rule 11(v) of the CCA Rules and FR 29(i), when ordering a penalty of reduction to a lower stage in the time scale of pay, the disciplinary authority will indicate:-

(i) the date from which the order will take effect;

(ii) the stage in the time scale of pay in terms of rupees to which the pay of the Government servant is to be reduced;

(iii) the period, in terms of year and moths, for which the penalty will be operative;

(iv) Whether the Government servant will earn increments of pay during the period of such reduction; and

(v) Whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay.

17. Reduction to a lower time scale of pay, grade, post or service

17.1. The penalty of reduction to a lower time scale of pay, grade, post or service may be imposed by disciplinary authority for a specified period or for an unspecified period.

17.2. The order will give:

(i) the lower time scale of pay, grade, post or service and stage of pay in the said lower time scale to which the Government servant is reduced;

(ii) the date from which the order will take effect;

(iii) where the penalty is imposed for a specified period, the period, in terms of years and months, for which the penalty will be operative;

(iv) if the penalty is imposed for an unspecified period directions

regarding conditions of restoration to the grade or posts or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service.

17.3. If the order does not specify any period and simultaneously there is an order declaring the Government servant permanently unfit for promotion, the question of his promotion will not arise. In other cases where the order does not specify any period, the Government servant should be deemed to be reduced for an indefinite period, i.e. till such date as on the basis of his performance subsequent to the order of reduction, he may be considered fit for promotion.

18. Promotion during the currency of punishment of withholding of increment or reduction to a lower stage in the time scale of pay.

An officer whose increments have been withheld or who has been reduced to a lower stage in the time-scale cannot be considered, on that account, to be ineligible for promotion to a higher grade, as the specific penalty of withholding of promotion has not been imposed on him. The suitability of such an officer for promotion should therefore, B(18) B(24)
be assessed by the competent authority as and when occasions arise for such assessment. In assessing his suitability the competent authority will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of the general service record of the officer and the fact of imposition of the penalty, he should be considered as suitable for promotion. Even where, however, the competent authority may consider that, in spite of the penalty, the officer is suitable for promotion, effect should not be given to such a finding and the officer should not be promoted during the currency of the penalty.

19. Imposition of two penalties

19.1. While normally there will be no need to impose two statutory penalties at a time, the penalty of recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or by breach of order could be imposed along with any other penalty.

20. Reduction in rank to a post lower than that on which one was recruited

The Supreme Court of India in the case of Nayadar Singh Vs. Union of India [1989(1) SLJ 1] has held that one cannot be reduced in rank to a post lower than one to which he was actually recruited.

CHAPTER XIII

DISCIPLINARY PROCEEDING IV

(MISCELLANEOUS)

1. Travelling allowance to accused Government servant for attending hearing of departmental enquiries

1.1. A Government servant against whom disciplinary proceedings have been initiated and who is under suspension may be allowed, under SR 153-A, travelling allowance as for a journey on tour from his headquarters to the place where the departmental enquiry is held or from the place at which he has been permitted to reside during suspension to the place of enquiry whichever is less, at the rate admissible to him according to the grade to which he belonged prior to his suspension. No travelling allowance will, however, be admissible if the enquiry is held at the outstation at his own request. D(27)

1.2. A Government servant against whom disciplinary proceedings have been initiated but who is not under suspension may be allowed travelling allowance as on tour under SR 154 for journeys performed to proceed from one station to another to appear before the inquiring authority. No travelling allowance will, however, be admissible to such Government servant if the enquiry is held at a place other than his headquarters expressly at his request.

2. Travelling, allowance to accused Government servant for journeys performed for inspection of records

A Government servant, whether on duty or on leave or under suspension, against whom an oral enquiry is being held under the CCA Rules may be allowed travelling allowance as for a journey on tour including daily allowance for halts restricted to a maximum of three days only for the journeys undertaken by him to the stations where the official records are made available to him for inspection. The travelling allowance will be allowed from the headquarters of the Government servant or from any other place where the Government servant may be spending his leave or where the Government servant, if under suspension, had been permitted, at his own request, to reside but not exceeding that which would be admissible had the journey been under taken from the headquarters of the Government servant.

2.2. The grant of travelling allowance will be subject to the following further conditions:-

(1) The inquiring authority certifies that the official records to be consulted are relevant and essential for the Government servant's defence;

(2) The competent authority certifies that the original records could not be sent to the headquarters station of the Government servant or the bulk of the documents rules but the possibility of copies being made out and sent; and

(3) The head of office under whose administrative control the Government servant is working certifies that the journey was performed with his approval. D(11A)

3. Treatment of the period spent on journey and during inspection of record

In the case of a Government servant who is not under suspension at the time of undertaking the journey, the period spent in transit to and from the place where official records are made available for inspection and the minimum period of stay required at the that place should be treated as duty or leave, according as the Government servant is on duty or on leave at that time. In the case of a Government servant under suspension who is subsequently reinstated in service, the period will be treated as duty, leave or otherwise in accordance with the orders passed by the competent authority under FR 54-B(1). D(11A)

4. Travelling allowance to Government servants appearing as witness in departmental enquiries.

4.1. A Central Government servant who is called to give evidence in a departmental enquiry on behalf of the disciplinary authority or on behalf of the accused Government servant will be entitled to draw travelling allowance as for a journey on tour under SR 154 from the Ministry/Department/Office where he is serving for the time being. The travelling allowance claim will be supported by a certificate or attendance from the inquiring authority in the form given in Section E. B(23) B(23)

4.2. If the witness is a State Government servant, he will be entitled to receive, in

respect of the attendance before the authority holding the departmental enquiry, from the State Government such travelling allowance and/or daily allowance as may be admissible to him under the rules applicable to him in that behalf in respect of a journey undertaken on tour and amount so paid shall be paid by the disciplinary authority (Central Government) to the State Government on its raising a book debit.

4.3. When a Government servant draws such travelling allowance he will not accept any payment of expenses from the inquiring authority.

4.4. If the Government servant is summoned to give evidence while he is on leave, he will be entitled to travelling allowance from and to the place here he was summoned as if he were on duty.

5. Treatment of period spent by a Government servant on journey and in giving evidence

B(23) 5.1. In the case of a Government servant who is called to give evidence before an Inquiry Officer (regarding acts which came to his knowledge in the discharge of his public duties), the minimum time required to be spent by him on the journey to and from the place where the enquiry is held and the days on which he is required to remain present before the inquiring authority will be treated as duty.

5.2. If the Government servant is on leave when he is summoned to give evidence, the entire period spent by him on the journey or in appearing before the inquiring authority will be treated as a part of the leave. He will not be given any extra leave in lieu of such attendance nor will his leave be considered to have been interrupted by such attendance nor will he be deemed to have been recalled to duty during that period.

6. **Travelling allowances to non-official witnesses**

B(23) 6.1. When a person who is not a public servant is called to give evidence before an inquiring authority or a person who has ceased to be a public servant is called to give evidence as to facts which came to his knowledge in the discharge of his public duties

D(29) when he was a public servant he will be entitled to claim, from the Ministry/Department or Office under whom the public servnt against whom the inquiry is being held is for the time being serving, travelling allowance as for a journey on tour under SR 190. If an inquiry is held by a Ministry/Department or Office other than the Ministry/Department under whom the Government, servant against whom the inquiry is held,

is for the time being serving, the Ministry/Department holding the inquiry will make on the spot payment of TA/DA to a private person called as a witness in a departmental inquiry and bear the charges. For this purpose, the Competent Authority may, with due regard to such person's position in life, declare by general or special order, the grade to which he shall be considered to belong. A competent Authority may, in its discretion, grant to him his actual travelling, hotel and carriage expense instead of travelling allowance if it considers that such allowance would be inadequate.

6.2. In the cases where the inquiry is ordered by a Ministry/Department to be conducted by a Commissioner for Departmental Inquiries, who is an officer of the Central Vigilance Commission, the Commissioner conducting the inquiry will determine the grade to which the witness may be considered to belong or he may order grant of actual cost of travelling. Carriage expenses under SR 190, and the expenditure on TA/DA of the witness will be debited to the Central Vigilance Commission and not to the Department to which the inquiry relates. TA/DA is paid on the spot when inquires are held at New Delhi. In other cases payment is made through Money Order/Bank Draft. D(29)

7. Travelling allowance to Presenting Officers and Government servants assisting the accused Government servant.

A person appointed by disciplinary authority to present the case in support of the articles of charge before the inquiring authority and the person assisting the Government servant against whom the enquiry is held in presenting his case will be entitled to travelling allowance as Government servants or non-Government servants, as the case may be. They will be granted a certificate by the inquiring authority regarding their attending the enquiry in the form given in Section E which will be attached to the TA bill. B(23) B(23)

8. Travelling allowance to a Government servant for journey to attend Police/ Special Police Establishment enquiries.

When a Government servant, whether on duty or under suspension, performs a journey to attend a Police/SPE enquiry in a case in which he is suspected to be involved, he may be allowed travelling allowance as for a journey on tour provided the journey is performed under the direction of or with the approval of the head of the office in which he is for the time being employed or was employed before suspension.

9. **Whether a disciplinary authority can initiate disciplinary proceedings if it**

has conducted the preliminary enquiry.

The object of a preliminary enquiry is to ascertain whether a prima facie case exists against the official and it is on the basis of this enquiry that the disciplinary B(11) B(25) authority decides whether disciplinary proceedings should be initiated. No firm conclusion regarding the guilt of the official is or need be expressed on the conclusion of a preliminary enquiry. The fact that the disciplinary authority conducted the preliminary enquiry, therefore, operates as no bar to the same authority initiating formal disciplinary proceedings.

10. Action against a State Government servant after his reversion.

If a Sate Government servant while on deputation to the Centre commits a misconduct which is noticed only after his reversion to the State Government, the disciplinary authority under whose control he was employed may make a preliminary B(32) enquiry and forward the relevant records to the State Government concerned for institution of departmental proceedings and further necessary action. This procedure is to be adopted because Rule 20 of the CCS (CCA) Rules, 1965, is not applicable for instituting proceedings against a State Government servant whose services were borrowed by the Central Government and whose services have since been replaced at the disposal of the State Government.

11. Disciplinary proceedings against Government servants other than principal offenders involved in a prosecution case

In a case in which several Government servants are party to a misconduct, fraud or embezzlement but it is decided to prosecute only some of them in a court of law it may be considered whether the Government servants, other than the principal B(4) offenders, against whom evidence was not found sufficient for prosecution but is sufficient enough for instituting disciplinary proceedings may be proceeded against departmentally immediately or after the result of the trial of the principal offenders is known. If the available evidence against such Government servants is sufficient, departmental proceedings should not be deferred till the result of the court trial is known. If there are any documents which will figure both in the court case as also in disciplinary proceedings, Photostat copies of such documents may be retained for production in the departmental proceedings before sending the documents to the court.

12. Departmental action against a Government servant guilty of irregulari-

ties in matters concerning co-operative societies, clubs etc.

B(6)

Departmental action can be taken against a Government servant who is found guilty of misappropriating funds or guilty of other irregularities in connection with institutions like co-operative societies, clubs and other similar bodies which are subsidised by Government and/or are established and run by Government servants.

13. Crossing of efficiency bar by a Government servant against whom departmental proceedings are pending

A Government servant, against whom departmental proceedings are pending but who is due to cross the efficiency bar prescribed in his time scale of pay, may not be allowed to cross the bar until after the conclusion of the proceedings. If after the conclusion of the proceedings, he is completely exonerated, he may be allowed to cross the efficiency bar with effect from the due date retrospectively unless the competent authority decides otherwise. If, however, the Government servant is not completely exonerated, he can not be allowed to cross the efficiency bar retrospectively but only with effect from the date following the conclusion of the disciplinary case, taking into account the outcome of the case. B(26)

14. Dropping of charges without inquiry in proceedings instituted for major penalty

14.1. The disciplinary authority has the inherent power to review and modify the articles of charge or drop some or all of the charges after examination of the written statement of defence submitted by the accused Government servant under Rule 14(4) of the CCS(CCA) Rules. That authority is not bound to appoint an Inquiry Officer for conducting an inquiry into the charges which are not admitted but about which that authority is satisfied on the basis of defence statement that there is no further cause to proceed with.

However, before taking a decision to drop any of the charges, the CVC should be consulted where the disciplinary proceedings were initiated on its advice and the CBI should also be consulted in cases arising out of investigations by the CBI.

14.2. Once disciplinary proceedings are initiated against a Government servant, the proceedings should not be closed without informing him. Accordingly, if it is proposed to drop the proceedings on receipt of the written statement of defence of the

Government servant or at any other state before the conclusion of the proceedings, a formal intimation about the closure of the proceedings should be sent to the accused Government servant and also to the authorities concerned.

15. Imposition of a minor penalty in proceedings instituted for major penalty

If in a disciplinary proceeding instituted under Rule 14 of the CCS (CCA) Rules, the disciplinary authority feels on receipt of a detailed written statement of defence of the Government servant that only a minor penalty would be justified, such an order can be passed by the disciplinary authority without a formal inquiry being held, provided the Charged Officer has been given a reasonable opportunity to defend himself. Such a short-cut has, however, to be adopted with great care and caution. If the Officer simply denies the charge without giving a detailed statement of defence or desires to be heard in person or otherwise has not had ample opportunity to prove his innocence, the proceedings must be completed by holding oral inquiry.

16. Action against a witness who departments from his original stand

If a Government servant who had made a statement in the course of a preliminary enquiry
changes his stand during his evidence at the enquiry, and if such action on his part is without justification or with the object of favouring one or the other party, his conduct would constitute violation of Rule 3 of the Conduct Rules rendering him liable for disciplinary action.

17. Defect in proceedings after the inquiry will not invalidate earlier part of the proceedings.

Once an enquiry has been properly held, a defect in the subsequent proceedings will not necessarily affect the validity of the oral enquiry. It was held in Lekh Raj Vs. State (A.I.R. 1959 M.P. 404) that where the order of dismissal was set aside on the ground that it was made by an authority subordinate to the appointing authority i.e. for contravention of Article 311(1), the fresh proceedings could be restarted from the stage after the oral enquiry.

18. Good and sufficient reasons

Any of the punishments specified in the CCA Rules can be imposed by the

competent authority for "good and sufficient reasons". What is good and sufficient reasons is for the disciplinary authority to decide. Nevertheless, action to dismiss or remove a Government servant could not be taken if the reason was not good and sufficient, Arbitrary or capricious or manifestly unfair decisions cannot secure immunity from judicial review. Thus, in Kannia Lal, Vs. State (A.I.R. 1959 Raj. L.W. 392), the dismissal of a Government servant on the ground that he had received some money from one person for being paid over the another, which he did, was set aside. The Supreme Court while delivering judgement in the case Union of India and others Vs. J. Ahmed (Civil Appeal No. 2152 of 1969 decided on 22.03.1979) has discussed as to what would constitute ' misconduct' as distinct from lack of devotion to duty and deficiencies attributable to the Government servant. This judgement may be kept in view while deciding whether "good and sufficient reasons' exist for the imposition of a penalty.

19. Punishment cannot be awarded on the basis of mere suspicion

A penalty which under the rules can be imposed for good and sufficient reasons cannot be awarded on the basis of mere suspicion. In Srinivasa Vs. State (A.I.R. 1961, MLJ 211), the Public Service Commission which was consulted before the imposition of the punishment, as prescribed by the relevant rules, while agreeing to the punishment proposed by the disciplinary authority stated in its report that the evidence "leaves suspicion in the mind'. It was not doubt open to the Government to take a different view from that of the Commission as regard the effect of the evidence and say that there was sufficient evidence. But, instead of doing so the Government simply proceeded to pass an order of punishment agreed to by the Commission. the Court held that the only conclusion to be draw from these facts was that the punishment was imposed on the basis of mere suspicion and not for good and sufficient cause and accordingly set aside the order.

20. Benefit of doubt effect on exoneration

Where the exoneration of a Government servant is on the ground that the charges were not established at all or where not established beyond doubt, it should make no difference in the resulting position since there can be no degrees in the matter of exoneration. Even when it is said that a Government servant has been given the benefit of doubt the decision in effect is that the allegations have been held not to be established. It would, therefore, not be right to invest mere doubt with any positive significance.

21. Notice for retirement on completing 50/55 years of age given to a Government servant against whom disciplinary proceedings are under way-effect of exoneration.

If a Government servant against whom disciplinary proceedings are contemplated or under way is given three months notice of retirement on attaining the age of 50/55 years and if at the conclusion of the disciplinary proceedings he is exonerated, his exoneration would not automatically imply the withdrawal of the notice of retirement. While in so far as the particular allegation in respect of which the disciplinary proceedings were initiated will be treated as having not been dropped, the exoneration will have no effect on the notice of retirement already issued by the Appropriate Authority after satisfying itself on the basis of all relevant factors that it was necessary so to do in the public interest. It does not, therefore, follow that in cases where the notice of retirement was given when disciplinary action was contemplated or was under way against a Government servant, his exoneration at the end of the enquiry would automatically mean that the order of retirement should be set aside. It is open to the Appropriate Authority to take into account its general assessment of the career of the Government servant and any other factors about his suitability and to exercise its power to retire a Government servant under F.R. 56(j) or (1) as the case may be, if it is necessary so to do in the public interest.

B(33) **22. Reconsideration of a decision by successor disciplinary authority**

22.1. When a decision is recorded by a disciplinary authority (other than the Head of the State) at the conclusion of the departmental proceedings, the decision is final and cannot be varied by the authority itself or by its successor in office before it is formally communicated to the Government servant concerned. The decision taken by the disciplinary authority is a judicial decision and once it is arrived at it becomes final.

B (33)

22.2. When a decision is to taken by or in the name of the Head of State as a disciplinary authority, it is open to disciplinary authority to vary or alter the opinions or advice. Once however the decision is recorded in the name of the Head of the State, it cannot be varied or altered. This, of course, is subject to the exercise of powers of review or revision expressly conferred upon the Head of the State by rules.

22.3. The Supreme Court in the case of Bachittar Singh Vs. State of Punjab (AIR 1963 SC 395) has held that merely writing something on the file does not amount to

an order. Before something amounts to an order of the State Government, two things are necessary. The order has to be expressed in the name of the Governor as required by Article 166 and then it has to be communicated. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to reconsider the matter over the over again, and therefore till its communication, the order cannot be regarded as anything more than provisional in character.

23. Propriety of holding a second enquiry after the orders passed on the first enquiry are quashed by a court of Law.

Normally the courts of law do not interfere in disciplinary matters on a question relating to the merits of the case. They generally interfere only when the proceedings are without jurisdiction or are characterised by a failure to give a fair opportunity to the Government servant to put forward his case or in other words where the principles of natural justice having not been kept in view or where the disciplinary proceedings are quashed by a court of law for such considerations, there would be no objection to the holding of a fresh enquiry. If however, in a particular case the court has gone into the merits of the case and has come to the conclusion that there was not evidence at all to support the findings of the inquiring authority, it would not be open to the disciplinary authority to hold a fresh enquiry, as a fresh enquiry would amount to reopening the exoneration of the Government servant by a court of law after an examination of all material before it and after its findings that there was no evidence whatever to support the Inquiry Officer's findings.

24. Placing of final orders on Character Roll

If as a result of disciplinary proceedings a punishment is imposed upon a Government servant, a copy of the order should invariably be kept on his Character Roll. If the Government servant is exonerated, the fact of exoneration need be noted in the C.R. only if in any earlier entry in the C.R. mention has been made of the departmental or other enquiry against him. B(21)

25. Relaxation of time-limits and condonation of delays

The Authority competent to make an order under the CCA Rules may, for good and sufficient reasons, or if sufficient cause is shown, extend the time specified in the rules for anything required to be done under the rules or condone any delay save as otherwise expressly provided in the rules (Rule 31 of CCA Rules). A(4)

B(37-B) **26. Publicity of names and particulars of officers involved.**

The following procedure should be observed in giving publicity of the names and particulars of officers involved in criminal prosecution/departmental proceedings:

(i) Where a case has been registered (R.C.) and an arrest made and a search carried out and some thing substantial is found (this precaution is necessary), there should be no objection to publicity being given to the designation or status of the person involved. The department to which he belongs and the nature of the allegations but no name need to be given.

(ii) When cases are taken to a court against an officer, publicity may be given as soon as the case is put up in the Court regarding the nature of offence and the designation of the Officer. The name of the officer should not be published.

iii) When an officer has been convicted by a court of law, the main facts of the case and relevant details of the case should be given publicity as also the name and designation of the officer, and the sentence awarded.

iv) In cases which are not taken to a court but in which only departmental action is taken no publicity should be given till the conclusion of such proceedings. However, statistics of disciplinary action taken against gazetted officers should be published promptly.

v) In disciplinary cases not ending in dismissal or removal, publicity may be given to the designation of the officer, details of the case and the punishment awarded to him. In no case should the name be published.

In disciplinary cases ending in dismissal or removal, the name, designation, department and all other particulars should be published. In cases where on appeal or review the penalty of dismissal or removal, is reduced or set aside, this may be given publicity if publicity was given about the original punishment of dismissal or removal.

vi) Publicity in respect of persons convicted or on whom a major punishment is inflicted should be done periodically over the radio and in the press, even by way of paid advertisements, under the caption "Do you know?", "Corruption does not pay" etc. Such publicity should be done in respect of some past cases also.

vii) In all cases investigated by the SPE the information to be published should be got cleared from the Central Bureau of Investigation and where they so advise, it should be released unofficially. B(38A)

27. Prosecution vis-à-vis departmental proceedings

27.1 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 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. B(40)

27.2 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 has to 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 along side criminal prosecution. In a case where the charges are C(134)

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.

27.3 The Supreme Court is in the case 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".

27.4 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 taken into account 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 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.

27.5 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 photostate 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.

28. Approval of the Minister where formal orders are made in the name of the President

28.1 In cases where the disciplinary authority is the President or where a formal order under the Discipline and Appeal Rules is to be made in the name of the President, the approval of the Minister concerned has to be obtained before making the formal order. It is however not necessary that the file should be submitted to the Minister every time a formal order in the name of the President is made. It would be sufficient if orders of the Minister-in-charge are obtained for initiating disciplinary proceedings and for taking action ancilliary to the charge-sheet, and again on receipt of the Inquiry officer's report, in case an inquiry has been held, or on receipt of the charged officer's reply to the memorandum initiating departmental proceedings against him, if it is proposed to impose any of the penalties prescribed in the Discipline and Appeal Rules and the case is to be referred to the UPSC for advice. Again, the approval of the Minister should be obtained at the stage of passing final order of punishment or of exoneration. The formal orders should be made in the name of President and authenticated by an officer who is so authorised under Article 77 (2) of the Constitution. B(64)

28.2 Under Rule 3 of the Transaction of Business Rules, it is competent for the Minister to delegate his functions to the Secretary or any other officer by general or special order and on such delegation it would not be necessary to take the Minister's orders in such cases. B(107)

B(107)

28.3 According to entry 39 (i) of the Third Schedule to the Government of India (Transaction of Business) Rules, 1961 cases relating to dismissal, removal, compulsory retirement or reduction in rank, of an officer of the All India Service or the Central Service Class I (Group 'A') holding a post, appointment to which requires the approval of the Appointments Committee of the Cabinet, are required to be submitted to the Prime Minister and the President. B(64)

29. Transfer pending disciplinary proceedings

If a Government servant against whom formal disciplinary proceedings have been initiated is transferred from the jurisdiction of disciplinary authority (A) to the jurisdiction of disciplinary authority (B) but continues to be in the

same service, it is not necessary for the disciplinary authority (B) to start de novo proceedings by framing and delivering fresh articles of charge. Disciplinary authority (B) can carry on with the enquiry proceedings at the point where the transfer of the accused officer was effected.

If, however, the Government servant is transferred to another Service, then the procedure laid down in Rule 12 (4) (b) of the CCS (CCA) Rules, 1965 will have to be followed.

30. Past misconduct

B(55C) Action can be taken against an employee in respect of misconduct committed by him in his previous or earlier employment if the misconduct was of such a nature as has rational connection with his present employment and renders him unfit and unsuitable for continuing in service. When such action is taken, the charge should specifically state that the misconduct alleged is such that it renders him unfit and unsuitable for continuance in service.

31. Banning of business dealing with firms/contractors

It has been decided that the use of word 'blacklisting' should be avoided and instead business dealings with firms/contractors may be banned, where necessary. The banning of business will be of two types, namely (i) banning confined to one Ministry; and (ii) banning to be implemented by all Ministries.

B(71) In the second category of cases, before any banning order relating to other ministries are passed, the matter is required to be placed before the Committee of Economic Secretaries and their approval obtained. Advice of the Central Vigilance Commission need not be sought for blacklisting (now banning) of firms/contractors or for withdrawal of blacklisting (now banning) order.

32. Documents to be returned to concerned authorities on completion of proceedings

The documents in a disciplinary case may be returned to the concerned authorities from whom they were collected, after the completion of the disciplinary proceedings and after the period of appeal/review has passed.

33. Procedure to be followed in cases where disciplinary proceedings are initiated against a Government servant who is officiating in a higher post on an ad-hoc basic.

If disciplinary proceedings are initiated against a Government servant, who is officiating in a higher post on ad-hoc basis, the following procedure may be followed:-

i) Where an appointment has been made purely on ad-hoc basis against a short-term vacancy or a leave vacancy or if the Government servant appointed to officiate until further orders in any other circumstances has held the appointment for a period less than one year, the Government servant should be reverted to the post held by him substantively or on a regular basis.

ii) Where the appointment was required to be made on ad-hoc basis purely for administrative reason (other than against a short term vacancy or a leave vacancy) and the Government servant has held the appointment for more than one year, he need not be reverted to the post held by him only on the ground that disciplinary proceeding has been initiated against him. Appropriate action in such cases may be taken depending on the outcome of the disciplinary case. B(138)

34. Difference of opinion between the CVO and the Chief Executive and between the Vigilance Officers and the Head of Office

With regard to category 'A' cases, i.e. the cases which are required to be referred to the Commission for advice, all relevant files, including the file on which the case has been examined, are required to be sent to the Commission. In such cases, the Commission would, thus, be in a position to examine all facts and view points of all the authorities concerned who might have commented on various aspects of the case. However, with regard to category 'B' cases, which are not required to be sent to the Commission for advice, if there is a difference of opinion between the concerned vigilance officer and the Head of Office, the matter may be reported by the Head of Office to the concerned

Chief Vigilance Officer for obtaining orders of the Chief Executive in order to resolve the difference of opinion between the vigilance officer and the Head of office. In case of difference of opinion between the CVO and the CMD in respect of corruption case, involving below Board level appointees in public sector undertaking, it is the responsibility of the CMD to bring the case to the Board.

35. Denial of LTC to Government servants found guilty of misuse of the facility

35.1 Whenever a case of fraudulent claim of LTC comes to notice and the competent disciplinary authority arrives at a conclusion that there is a prima-facie case for initiating disciplinary proceedings against the Government servant for this misconduct, the claim for the LTC should be withheld and he should not be allowed this facility till finalisation of the proceedings.

35.2 If the Government servant is fully cleared of the charges of misuse of LTC, he should be allowed to avail of the LTC withheld earlier as additional set (s) of the LTC in future blocks of years but before his normal date of superannuation. In such a situation, the provision relating to lapsing of LTC facility not availed of within the first year of the next block will not apply.

35.3 If, however, the Government servant is not fully cleared of the charges of misuse of the LTC, he shall not be allowed the next two sets of LTC in addition to the set (s) of LTC already withheld. If the nature of the misuse is grave, the competent authority may disallow more than two sets of LTC. Such disallowance shall be without prejudice to the punishment for any proved misconduct in the disciplinary proceedings.

36. Grant of immunity to 'Approvers' in Departmental Inquiries

36.1 The procedure for grant of immunity pardon to the officers/officials from departmental action or punishment in respect of cases investigated by the CBI has been laid down in para 7 Chapter IV of this Manual. It is felt that an analogous procedure could be utilised to considerable advantage in departmental proceedings and the evidence of the 'Approvers' would lead to con

considerable headway in investigation of cases. This would also facilitate booking of fences of more serious nature. The following procedure may be followed for grant of immunity/leniency to an employee in the departmental inquiries conducted by the CVO's :-

a) If during an investigation, the CVO finds that an officer, in whose case the advice of the Commission is necessary has made a full and true disclosure implicating himself and other publics serv - ants or members of the public and further that such statement is free from malice, the CVO may sent to the CVC his recommendation regarding grant of immunity/leniency to such officer from the departmental action or punishment. The CVC will consider the recommendation of the Chief Vigilance Officer in consultation with the administrative Ministry concerned and advice that authority regarding the course of further action to be taken.

b) In cases pertaining to the officials against whom the advice of the CVC is not necessary, the recommendation for grant of immunity/leniency may be made to the Chief Vigilance Officer who will consider and advise the disciplinary authority regarding the course of further action to be taken. If there is a difference of opinion between the Chief Vigilance Officer and the disciplinary authority, the CVO will refer the matter to the Central Vigilance Commission for advice.

36.2 The intention behind the procedure prescribed above is not to grant immunity/leniency in all kinds of cases but only in cases so serious nature and that too on merits. It is not open to officer/official involved in a case to request for such immunity/leniency but it is for the disciplinary authority to decide in consultation with the Central Vigilance Commission or the Chief Vigilance Officer, as the case may be, in which case such an immunity/leniency may be considered and granted in accordance with the procedure prescribed above in the interest of satisfactory prosecution of the disciplinary case.

CHAPTER XIV

ACTION AFTER REINSTATEMENT

1. Reinstatement

A Government servant will be reinstated in service:

(i) if he had deep placed under suspension pending criminal or departmental proceedings against him and is acquitted by the court of law or if the departmental proceedings instituted against him are withdrawn for any reason or if he is exonerated or is awarded a penalty other than that of compulsory retirement, removal or dismissal from service;

(ii) if the penalty of compulsory retirement, removal or dismissal from service imposed upon him is set aside by a court of law or by the appellate/reviewing authority. (Please see para 10.1. of Chapter V also).

2. Order to be passed on reinstatement.

When a Government servant is reinstated in service the authority competent to order the reinstatement shall make a specific order - A(13)

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty; and

(b) whether or not the said period shall be treated as a period spent on duty.

3. When penalty of dismissal/removal/compulsory retirement is set aside for non-observance of procedure prescribed under Article 311 of the Constitution.

3.1. If an order of dismissal, removal or compulsory retirement from service is held by a court of law or by the appellate/reviewing authority to have been made without following the procedure prescribed under Article 311 of the Constitution, and no further inquiry is proposed to be held, action to regulate his pay and allowances for the period of absence from duty and to specify whether the said period shall be treated as duty for any specific purpose will be taken in accordance with FR 54 or FR 54-A, as the case may be .

3.2. In such cases, if it is decided to hold a further inquiry and thus deem the Government servant to have been placed under suspension from the date of dismissal/removal/compulsory retirement under Rule 10(3) or (4) of the CCA Rules, the Government servant will be paid the subsistence allowance from the date he is deemed to have been placed under suspension under FR 53.

4. When a penalty imposed in a departmental proceedings is set aside on grounds other than non-observance of procedure.

4.1. If an order of suspension or the penalty of dismissal/removal/ compulsory retirement imposed in a departmental proceedings is set aside by the appellate/reviewing authority on grounds other than non-observance of procedure prescribed under Article 311 of the Constitution, i.e. on grounds of equity, the payment of pay and allowances for the period of absence from duty and the treatment of the period as duty or otherwise will be governed by FR 54 as set out in the following sub-paragraphs. B(29)

4.2. The authority competent to order the reinstatement of the

Government servant will first consider and decide whether, in its opinion, the Government servant has been full exonerated or, in the case of suspension, whether it was wholly unjustified, in the light of the facts and circumstances of each case.

4.3. If the competent authority is of the opinion that the Government servant has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government servant shall be entitled to:-

(i) full pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended, as the case may be under FR 54(2); provided that where such authority is of the opinion that the termination of proceedings had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation, direct for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay, only such amount (not being the whole) of pay and allowances as it may determine;

(ii) the period of his absence from duty for the entire period will be treated as period spent on duty for all purposes under FR 54(3).

4.4. In cases where the competent authority is of the opinion that the Government servant has not been fully exonerated or in the case of suspension, that it was not wholly unjustified, the Government servant shall be entitled to:-

i) such amount (not being the whole) of pay and allowances to which he should have been entitled, had he not been dismissed, removed or compulsory retired, or suspended as

the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering his representation, if any; and

ii) the period of his absence from duty shall not be treated as period spent on duty unless the authority competent to reinstate the Government servant specifically directs that it shall be so treated for any specified purpose or purposes or for all purposes. If no order is passed directing that the period of absence be treated as duty for any purpose (s), the period should be treated as non-duty. The competent authority may, however, order, if the Government servant so desires, that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant.

5. Court cases in which penalty is set aside on grounds other than non-observance of procedure.

In cases in which a Government servant under suspension is acquitted by a court of law or where the penalty of removal, dismissal or compulsory retirement is set aside by court of law on grounds other than non-observance of procedure prescribed under Article 311 of the Constitution and the order reinstating the Government servant is passed sometime after the date of acquittal, the pay and allowances for the period of absence from duty and the counting of that period as duty should be regulated under FR 54-A as follows:-

(i) from the date of suspension/ removal/ dismissal/compul-sory retirement to the date of acquittal.

(a)If the Government servant is treated as having been fully exonerated,

full pay and allowances and period to be treated as duty for all purposes.

(ii) from the date of acquittal to the date of rejoining duty.

(b) If not treated as having been fully exonerated, proportionate pay and allowances and the period to be treated as non-duty or as duty for specific purpose or purposes or for all purposes as determined by the competent authority. Here too, notice to the Government servant concerned giving him an opportunity to represent against the quantum of pay and allowances proposed is necessary before orders are passed.

Full pay and allowances and the period to be counted as duty for all purposes.

6. When acquittal by a court of law may be treated as exoneration or suspension can be said to be wholly unjustified.

In law, the expression "full exoneration" is not recognised or made use of. It is for the authority competent under FR 54-A to determine from the circumstances of each case whether acquittal by a court of law should be taken to mean full exoneration or not. For example:

(i) If the entire available evidence was placed before the court and the court after due consideration thereof came to the conclusion that the Government servant concerned was not proved to be guilty on that score, he could ordinarily be deemed to have been acquitted of blame and fully exonerated;

(ii) If the order of acquittal is recorded on grounds of technical flaw in the prosecution, (e.g., want of sanction to prosecute, misjoinder of charges, want of court's jurisdiction to try the case, etc.) or if the matter is not proceeded with merely on technical grounds, the Government servant can not be treated as fully exonerated. Likewise, if the available evidence could

not be produced before the court, for example, owning to the death or unavailability of the material witnesses or destruction or unavailability of relevant documents and the prosecution for that reason failed to bring home the guilt of the accused, the acquittal can not be regarded as honorable and the accused Government servant cannot be said to have been fully exonerated;

(iii) When a Government servant who is detained in custody under any law providing for preventive detention and who is deemed to be under suspension on that account is subsequently reinstated without taking disciplinary proceedings against him, his pay and allowances for the period of suspension will be regulated under FR 54-B, i.e. if the detention is held by the competent authority to be unjustified, the case may be dealt with under FR 54-B(3) and (4); otherwise it should be dealt with under FR 54-B(5) and (7). In the case of a Government servant who was deemed to have been placed under suspension due to his detention in police custody erroneously or without basis and thereafter released without any prosecution having been launched, the competent authority should apply its mind at the time of revocation of the suspension and re-instatement of the Government servant and if it comes to the conclusion B(96) that the suspension was wholly unjustified, full pay and allowances may be allowed;

(iv) In the case of a Government servant against whom proceedings had been taken for his arrest for debt but who was not actually detained in custody and who is placed under suspension on that account but ultimately it is proved that his liability arose from circumstances beyond his control, the case may be dealt with under FR 54-B (3) and (4); otherwise under FR 54-B(5) and (7).

B(132) (v) When 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 said to be wholly unjustified in terms of FR 54-B and full pay and allowance should be paid to the concerned employee.

7. Applicability of law of limitation.

D(18) In all cases falling under paragraphs 4 and 5, where full pay and allowances is allowed under FR 54(2), or FR 54-A (3), as the case may be, while paying the arrears of pay and allowances for the period from the date of dismissal/removal/compulsory retirement/suspension to the date of reinstatement, the law of limitation i.e. restricting the payment to a period of three years prior to the date of reinstatement need not be invoked.

8. Deductions of other earnings made, if any, during the period of absence.

D(18) In all cases covered by paragraphs 4 and 5, any payment made to the Government servant on his re-instatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible are equal or less than the emoluments earned during the employment elsewhere, nothing shall be paid to the Government servant.

9. Conversion of the period of absence from duty into leave.

9.1. Under the provisions of FR 54, FR 54-A and FR 54-B, if the

Government servant so desires, the period of absence from duty may be allowed by the competent authority to be converted into leave of any kind due and admissible to the Government servant. Any order passed in this regard by the authority competent to reinstate the Government servant is absolute and the sanction of any higher authority will not be necessary for the grant of extraordinary leave in excess of three months in the case of temporary Government servants, and leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant. A(18)

9.2. On the conversion of the period of absence from duty in such cases into leave with or without allowances, if it is found that the total amount of subsistence and compensatory allowances drawn during the period of suspension exceeds the amount of leave salary and allowances admissible the excess will have to be recovered.

10. Filling up of vacancies caused by dismissal etc. of Government servant.

10.1. A permanent post vacated by the dismissal, removal or compulsory retirement of a Government servant should not be filled substantively until the expiry of the period of one year from the date of such dismissal, removal or compulsory retirement, as the case may be. The period of one year has been prescribed so as to cover the time that usually elapses before the Government servant prefers an appeal and orders are passed on it by the competent authority. Where, on the expiry of the period of one year, the permanent post is filled and the original incumbent of the post is reinstated thereafter, he should be accommodated against any post which may be substantively vacant in the grade to which his previous substantive post belonged. If there is no such vacant post, he should be accommodated against a supernumerary post which should be created in that grade with proper sanction and with the stipulation that it would be terminated on the occurrence of the first substantive vacancy in that grade. D(16)

10.2. It is not necessary to keep a post vacant for a period of one year to provide for the contingency of subsequent reinstatement and confirmation in respect of a Government servant who at the time of dismissal, removal or compulsory retirement was not holding substantively a permanent post but would have been considered for confirmation but for the penalty imposed.

CHAPTER XV

ACTION AGAINST PENSIONERS

1. Circumstances in which pension may be reduced, withheld or with drawn.

1.1. A pension is not in the nature of a reward. It is an obligation on Government which can be claimed by a retired Government servant as a right.

1.2. rule 6 of the CCS (Pension) Rules, 1972, has been deleted w.e.f. 03.03.1980. As a result it is no longer necessary to go through the exercise of determining whether any part of the qualifying service of the retiring Government servant was unsatisfactory. Thus, the question of making any reduction in pension would not arise except in cases where provisions of Rule 9 relating to departmental or judicial proceedings are invoked.

A(24) 1.3. After pension has been granted, future good conduct is an implied condition of its continued payment. The appointing authority can withhold or withdraw a pension or any part of it if the pensioner is convicted of serious crime or is found guilty of grave misconduct [vide Rule 8 of the CCS (Pension) Rules, 1972].

A(24) 1.4. Under Rule 9 of the CCS (Pension) Rules, 1972, the President has reserved to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and of ordering recovery from the pension of whole or part of any pecuniary loss caused to Government if the pensioner is found, in a departmental or judicial proceedings, to have been guilty of grave misconduct or negligence during the period of his service including his service under re-employment.

2. Action in cases in which departmental proceedings had been initiated before retirement.

2.1. If departmental proceedings had been initiated against a Government servant under the C.C.A. Rules while he was in service, including re-employment, the proceedings will be deemed to be proceedings under Rule 9 of the CCS (Pension) Rules, 1972 and will be continued and concluded by the authority by which the proceedings were commenced in the same manner as if the Government servant had continued in service.

2.2. If the proceedings had been initiated by an authority subordinate to the President, such authority will submit the report of the Inquiring Authority, after recording its findings to the Government, as the power to pass orders in such a case vests in the President under Rule 9 of the CCS (Pension) Rules, 1972.

2.3. In terms of Rule 9(2) (a) of the C.C.S. (Pension) Rules, 1972, the Central Government has the power to withhold or withdraw pension even as a result of minor penalty proceedings instituted against the Government servant, while in service, and continued after his retirement, provided grave misconduct or negligence is established. It should however be the endeavour of the disciplinary authority to see that minor penalty proceedings instituted against a Government servant, who is due to retire, are finalised quickly and preferably before his retirement so that the need for continuing such proceedings beyond the date of retirement does not arise.

2.4. Even though there is no statutory requirement in Rule 9(1) of the C.C.S. (Pension) Rules, 1972, for giving a show-cause notice, the principles of natural justice would have to be followed. It would, therefore, be necessary to issue a show-cause notice to the pensioner, giving him an opportunity to represent against the proposed penalty (if no inquiry has been held in the manner provided in Rule 14 of the C.C.S. (CCA Rules), and take his representation into consideration before obtaining the advice

of the UPSC and passing the final order. However, there is no need to issue a show-cause notice where an oral inquiry in which the Government servant/pensioner has had a reasonable opportunity to defend his case was held. In such cases, a copy of the inquiry report may be sent to him giving him an opportunity to make any representation or submission as stated in para 1.2, chapter XII.

2.5. 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 9 (2) 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 straight-away 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.

3. Action in cases in which a Government servant had retired from service.

3.1. If departmental proceedings had not been instituted while the officer was in service including the period of his re-employment, if any, proceedings under Rule 9 of the CCS(Pension) Rules, 1972 can be instituted only:- A(19)

a) by or with the sanction of the President, and

b) in respect of a cause of action which arose, or in respect of any event which took place not earlier then four years before the institution of the proceedings. E(12)

3.2. The proceedings will be conducted by such authority and at such placed as the President may direct and in accordance with the procedure applicable in departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during

his service.

3.3. A standard form of Memorandum of charges to be served on the pensioner is given in Section E. On receipt of his reply an inquiry will be held in accordance with the procedure prescribed in Chapter XI. On receipt of the report of the Inquiring Authority, if Government decides to take action under Rule 9 of the CCS (Pension) Rules, 1972, further
E(13) action will be taken as stated in para 2.4 above.

3.4. On receipt of the reply of the pensioner the Union Public Service Commission will be consulted in all cases in which action is proposed to be taken under rule 9 of the CCS (Pension) Rules, 1972. After considering the reply of the pensioner and the advice of the Union Public Service Commission, orders will be issued in the name of the President under
D(8) the signature of an office authorised to authenticate order on behalf of the President.

4. Judicial proceedings

4.1. If a Government servant is found guilty of a grave misconduct or negligence as a result of judicial proceedings instituted against him before his retirement, including re-employment, action may be taken against him by Government under Rule 9 of the CCS (Pension) Rules, 1972. Such action cannot, however, be taken on the results of any proceedings instituted after his retirement unless the proceedings relate to a cause of action which arose or an event which took placed not more than four years before the date of the institution of such proceedings.

4.2. the Union Public Service Commission is to be consulted before making any order under Rule 9 of the CCS (Pension) Rules, 1972 on the basis of the results of any judicial proceedings.

5. Determination of the date of institution of proceedings.

5.1. For the purposes of rule 9 of the CCS (Pension) Rules, 1972, a departmental proceedings will be deemed to have been instituted on the date on which the statement of charge is issued to the Government servant or to the pensioner concerned or if he had been placed under suspension from an earlier date from the date of suspension.

5.2. A judicial proceedings will be deemed to be instituted:-

(a) in the case of criminal proceedings, on the date on which the complaint or report of police office, of which the Magistrate takes cognisance, is made, and

(b) in the case of civil proceedings on the date of presentation of the plaint in the Court.

6. Recovery from Pension of pecuniary loss caused to Government.

In cases where pension as such is not withheld or withdrawn but the amount of any pecuniary loss caused to Government is ordered to be recovered from pension, the recovery should not ordinarily be made at a rate exceeding one third of the gross pension originally sanctioned including any amount which may have been commuted. This is an administrative decision based more on equitable considerations for, legally speaking, it is permissible under rule 9 of the CCS (Pension) Rules, 1972 to set off the pension in full towards the recovery.

D(12)

7. Possession of disproportionate assets.

D(13)

The term "grave misconduct" used in rule 9 of the CCS (Pension) Rules, 1972 is wide enough to include corrupt practices. In cases in which the charge of corruption on that ground is proved after pension has been sanctioned action to withhold or withdraw the pension may be taken under Rule 9 of the CCS (Pension) Rules, 1972. If proceedings are to be instituted under rule 9 of the CCS (Pension) Rules, 1972 after

D(15) the retirement of the Government servant, the property or pecuniary resources in respect of which the proceedings are to be instituted should have been in possession of the retired Government servant or by any other person on his behalf at any time within a period of four year before the institution of such proceedings.

8. **Travelling allowance to a retired Government servant to attend departmental enquiry instituted against him.**

A retired Government servant who is required to attend a departmental enquiry instituted against him under rule 9 of the CCS (Pension) Rules, 1972 may be allowed travelling allowances as on tour by the shortest route for the journey in connection with enquiry from his 'home-town' (declared as such for the purposes of Leave Travel Concession by Central Government servants) to the place of enquiry and back or in case of a person concerned who has taken up residence after retirement at a place other than the 'home-town (vide S.R. 146 & 147) for journey from such place of residence to the place enquiry and back. However, if at the time of receipt of summons, the retired Government servant is at a place different from his 'home-town' or his place of residence, the travelling allowance should be restricted to the shorter of the two journeys between that place and the place of enquiry and between the 'home-town/place' of residence and the place of enquiry. The travelling allowance shall allowed on the basis of the pay of the post held by the retired Government servant immediately prior to retirement. No advance of travelling allowance should be paid in connection with such journeys.

9. Action against officer of the All India Services.

Similar action against officers of the All India Services can be taken in accordance with the provisions of Rule 6 of the All India Services (Death cum Retirement Benefit) Rules, 1958.

CHAPTER XVI

CONSULTATION WITH UPSC IN DISCIPLINARY MATTERS

1. Constitutional provisions

Article 320(3)(c) of the Constitution provides that the U.P.S.C. shall be consulted on all disciplinary matters affecting a person serving under the Government of India in a civil capacity, including memorials and petitions relating to such matters. The proviso to this Articles provides that the President may make regulation specifying the matter in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary to consult the UPSC. The President has under this proviso made the Union Public Service Commission (Exemption from Consultation) Regulations, 1958.

A(15)

2. Matters in which consultation with UPSC is necessary.

It is necessary to consult the UPSC in the following type of cases:-

a) an original order by the President imposing any of the penalties;

b) an order by the President on an appeal against an order imposing any of the prescribed penalties made by a subordinate authority;

c) an order by the President over-ruling or modifying, after consideration of any petition or memorial or otherwise, an order imposing any of the prescribed penalties made by the President or by a subordinate authority;

d) an order by the President imposing any of the prescribed penalties in exercise of his powers of review and in

modification of an order under which none of the prescribed penalties has been imposed.

3. Matters in which it is not necessary to consult the U.P.S.C.

It is not necessary to consult the U.P.S.C. in regard to the following matters:-

i) disciplinary matters affecting person paid out of the Defence Services Estimates including civilians in defence services;

ii) in any case where the President proposes to make an order of dismissal, removal or reduction in rank in the interest of the security of the State;

iii) in any case where on conclusion of the disciplinary proceedings, it is proposed not to impose any punishment on the officer.

4. Procedure of consultation in minor penalty cases.

B(38)

4.1. In cases in which proceedings have been initiated under Rule 16(1)(a) of the C.C.A. Rules and where no oral enquiry has been held, a reference will be made to the U.P.S.C. after the representation, if any, of the Government servant against the proposal to take action against him has been received, in the form of an official letter, with which the following papers will be forwarded:-

a) memorandum containing the allegation;

b) Government servant's reply thereto;

c) a self-contained factual note, where necessary, giving clarifications/comments to explain the point made in the

Government servant's explanation. The clarifications and comments should, however, be only factual and procedural without expressing any opinion on the merits of the case. This note will form part of the record of the case.

4.2. Cases in which proceedings were initiated under Rule 16(1) (b) of the C.C.A Rules and where an oral enquiry has been held, the U.P.S.C. will be consulted after the receipt of the report of the Inquiring Authority. The record of the case will be forwarded to the Commission with clarifications/comments, where necessary, to explain any factual/ procedural points only in the light of any remarks contained in the inquiry report. This note will form part of the record.

5. Consultation in major penalty cases.

In cases where an enquiry has been held under Rule 14 and the Government consider that a major penalty is called for, the reference to the U.P.S.C. will be made after the receipt of the report of the inquiry officer. The record of the case will be forwarded to the Commission with a separate note, if necessary, giving clarificatory remarks on any factual or procedural points, only in the light of any remarks contained in the Inquiry report. The note should not however, discuss the merits of the case and should not record any findings on the charges or express and opinion regarding the penalty to be imposed on the Government servants. The note will form part of the record.

6. Cases of appeals

While forwarding an appeal to the Commission, no opinion should be expressed on the merits of the case.

7. Cases of revision or review on petitions/memorials or otherwise.

7.1. In terms of the U.P.S.C. (Exemption from consultation) Regulations, the Commission is required to be consulted only when the President proposes to pass an order overruling or modifying, after consideration of any petition or memorial or otherwise, an order imposing any of the penalties made by the President or by a subordinate authority, or an order imposing any of the penalties in exercise of his powers of revision or review and in modification of an order under which none of the penalties has been imposed. In such cases there is no objection to the Ministry indicating in a separate note or in the forwarding letter the consideration on account of which a modification of the order already passed in the case is called for.

7.2. No order imposing or enhancing any penalty, shall be made by the reviewing authority unless the Government servant concerned has been given a reasonable opportunity of making a reprsentation against the penalty proposed and where it is proposed to impose any of the penalties mentioned in Rule 16(1A) of the C.C.S. (CCA) Rules, 1965 of clauses (V) to (IX) of rule 11 of the said rules or to enhance the penalty imposed by the order sought to be reviewed to a penalty referred to in rule 16 (1A) or clauses (V) to (IX) of Rule 11 of the said Rules, no such penalty shall be imposed except after an inquiry in the manner laid down in rule 14 of the CCS (CCA) Rules, 1965. In such cases, the Government's comments on any factual/procedural points raised by the Government servant in his representation should be forwarded to the Commission together with all relevant papers. The clarifications/comments should, however, be factual and procedural without expressing any opinion on the merits of the case. This note will form part of the record of the case. Where an inquiry has been held, the record of the case will be forwarded to the Commission with a separate note, if necessary, giving clarificatory remarks on any factual or procedural points only in the light of any remarks contained in the Inquiry report. This note will form part of the record.

8. **Proforma**

Whenever disciplinary case is referred to the UPSC it should be accompanied by a proforma giving full particulars about the Government servant and the case. The proforma should be signed by an Officer of the Ministry/Department making the reference. Meticulous care should E(32) be taken about the correctness of the entries made in the proforma and that they are complete in all respects.

9. **Advice of the UPSC.**

The UPSC will sent its advice with two spare copies.

10. **Cases in which it is not proposed to accept the advice of the UPSC.**

When it is proposed not to accept the advice of the UPSC, the case should be shown to the Department of Personnel and Administrative Reforms before orders are passed.

11. **Effect of non-consultation in law.**

While Article 311 of the Constitution confers a right upon the Government servant, Article 320 (3) (c) does not confer any such right. The consultation prescribed by the sub-clause is only to afford proper assistance to the Government in assessing the guilt or otherwise of the delinquent officer as well as the suitability of the penalty to be imposed.

CHAPATER XVII

APPEAL, REVISION, REVIEW PETITIONS AND MEMORIALS

1. Orders against which appeal lies

Under Rule 23 of CCA Rules, a Government servant including a person who has ceased to be in Government service, may prefer an appeal against the following orders:-

i) an order of suspension made or deemed to have been made;

ii) an order imposing any of the prescribed penalties whether made by the disciplinary authority or by an appellate or reviewing authority;

iii) an order enhancing a penalty;

iv) an order which :

  a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or by agreement;

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

v) an order:-

  a) stopping him at the efficiency bar in the time scale of pay on the ground of his unfitness to cross the bar,

  b) reverting him while officiating in a higher service, grade or post to a lower service, grade or post, otherwise than as a penalty.

c) reducing or withholding the pension, including additional pension, gratuity and any other retirement benefit, or denying the maximum pension admissible to him under the rules,

d) determining the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof,

e) determining his pay and allowances:-

i) for the period of suspension, or

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

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

2. O**rders against which appeal does not lie (Rule 22 of CCA Rules).**

No appeal lies against the following orders:- A(4)

i) any order made by the President;

ii) any order of interlocutory nature or of the nature of a step-in-aid or the final disposal of a disciplinary proceedings other than an order of suspension;

iii) any order passed by an Inquiry Officer during the course of the enquiry.

3. Appellate Authority (Rule 24 of CCA Rules).

3.1. A Government servant, including a person who is no longer in Government service, may prefer an appeal against any order referred to in para 1 above to the appelate authority specified in this behalf in the Schedule to the CCA Rules or by a general order or special order of the President . Where no such authority is, specified, the appeal or Group A or Group B Officers shall lie to the appointing authority, where the order appealed against is made by an authority subordinate to it; and to the President where such order is made by any other authority. An appeal from a Government servant of Group C or Group D will lie to the authority to which the authority making the order appealed against is immediately subordinate.

3.2. 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.

3.3. Where the President is the appellate authority and has on his motion reviewed and confirmed the punishment imposed by a subordinate authority, an appeal will still lie to the President under Rule 23/24 of CCA Rules against the punishment order passed by the subordinate authority.

3.4. A Government servant may prefer an appeal against an order imposing any penalty to the President, even if no such appeal lies to him, if such penalty is imposed by any authority other than the President on such Government servant in respect of his activities connected with his work as an office-bearer of an association, federation or Union participating in the Joint Consultative Machinery. All such appeals B(55D) should be placed before the Minister-in-charge for final orders, irrespective of whether the general directions in various Ministries, relating to disposal of appeals addressed to the President, require such submission or not. In respect of persons serving in Indian Audit and Accounts Department, such appeals will be disposed of by the C&AG of India.

4. Period of limitation for appeals (Rule 25, CCA Rules)

No appeal shall be entertained unless it is preferred with in a period of 45 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 even after the expiry of a period of 45 days if it is satisfied that the appellant has sufficient cause for not preferring the appeal in time.

5. Form and content of appeal (Rule 26, CCA Rules)

Every appeal shall be preferred by the appellant in his own name and addressed to the authority to whom the appeal lies. It shall contain all material statements and arguments on which the appellant relies, shall not contain any disrespectful or improper language and shall be complete in itself.

6. Channel of submission (Rule 26, CCA Rules)

6.1. The appeal will be presented to the authority to whom the appeal lies, a copy being forwarded by the appellant to the authority which made the order appealed against.

6.2. The authority which made the order appealed against will, on receipt of the copy of the appeal, forward the same to the appellate authority, without any avoidable delay and without waiting for any direction from appellate authority, with all the relevant records and its comments on all points raised by the appellant. Mis-statement, if any, should be clearly pointed out.

7. Consideration of appeal (Rule 27, CCA Rules)

7.1. In the case of an appeal against an order imposing any of the penalties specified in Rule 11 of CCA Rules or enhancing any penalty imposed, the appellate authority, while considering the appeal, should see:-

i) Whether the procedure laid down in the rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution or in the failure of justice;

ii) whether the findings of the disciplinary authority are warranted by the evidence on the record of the case; and

iii) whether the penalty or the enchanced penalty imposed is adequate, inadequate or severe.

7.2. Where the appeal is against an order imposing a major penalty and the appellant makes a specific request for a personal hearing, the appellate authority may after considering all relevant circumstances of the case, allow the appellant, at its discretion, the personal hearing. Such personal hearing of the appellant by the appellate authority at times may afford the former an opportunity to present his case more effectively and thereby facilitate the appellate authority in deciding the appeal quickly and in a just and equitable manner.

8. Orders by appellate authority (Rule 27, CCA Rules)

8.1. In the light of its findings the appellate authority may pass an order:-

(i) confirming enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to that authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

8.2. The Supreme Court in the case of Mahavir Prasad Vs. State of UP (AIR 1970 SC 1302 observed that recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, when or fancy, reached on ground of policy or expediency. Therefore, the authorities exercising disciplinary powers conforming to the aforesaid B(113) legal requirements, and issue such order under their own signatures. It is only in those cases where the President is the prescribed authority and where the Minister-concerned has considered the case and given his orders that an order may be authenticated by an officer who has been authorised to authenticate orders in the name of the President.

9. Procedure when a minor penalty is proposed to be enhanced to a major penalty (Rule 27, C.C.A. Rules)

If the appellate authority proposes to enhance the penalty and if the enhanced penalty is one of the major penalties and an enquiry according to the procedure laid down in Rule 14 of CCA. Rules has not already been held in the case, the appellate authority shall itself hold such enquiry or direct that such enquiry be held in accordance with the provisions of Rule 14 and thereafter, on a consideration of the proceedings of such enquiry make such orders as it may deem fit.

10. Procedure when it is proposed to impose a higher major penalty than that already imposed (Rule 27, CCA Rules).

If the appellate authority proposed to enhance the penalty and if the enhanced penalty is one of the major penalties and an enquiry according to the procedure laid down in Rule 14 of CCA. Rules has not already been held in the case, the appellate authority shall itself hold such enquiry or direct that such enquiry be held in accordance with the provisions of Rule 14 and thereafter, on a consideration of the proceedings of such enquiry make such orders as it may deem fit.

10. Procedure when it is proposed to impose a higher major penalty than that already impost Rule 27, CCA Rules)

If the appellate authority proposes to impose a higher major penalty than that already imposed and an inquiry under Rule 14 has already been held in the case, the appellate authority will make such orders as it may deem fit.

11. When it is proposed to impose a higher minor penalty than that already imposed (Rule 27, CCA Rules).

No order imposing a higher minor penalty than that already imposed in the departmental proceedings will be made unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 16 of CCA Rules, of making a representation against such enhanced penalty.

12. **Consultation with UPSC**

The UPSC will be consulted before orders are passed in all cases where consultation is necessary.

13. **Implementation of orders in appeal (Rule 28, CCA Rules)**

13.1. The following authorities may at any time, either shall give effect to the orders passed by the appellate authority.

14. Revision and Review

14.1. The Delhi High Court, in their judgement in the case of Shri R.K. Gupta Vs. Union of India and another (Civil Writ Petition No.196 of 1978 and 322 of 1979) have held that under rule 29 of the CCS (CCA) Rules, 1965 (then in force):-

(1) the President has power to review any order under the CCS (CCA) Rules, 1965 including an order of exoneration; and

(2) the aforesaid power of review is in the nature of re-visionary power and not in the nature of reviewing one's own order.

The Ministry of Law have observed that the judgement of the Delhi High Court would indicate that the President cannot exercise his re-visionary powers in a case in which the power had already been exercised after full consideration of the facts and circumstances of the case. They also observed that there was not objection to providing for a review by the President of an order passed by him earlier in revision if some new fact or material having the nature of changing the entire complexion of the case comes to his notice later. Accordingly, rule 29 of the CCS (CCA) Rules, 1965 has been amended by a notification of 6th August, 1981 to make it clear that the power available under that rule is the power of revision. A new rule 29-A has been introduced specifying the powers of the President to make a review of any order passed earlier, including an order passed in revision under rule 29, when any new fact or material which has the effect of changing the nature of the cases comes to his notice. While the President and other authorities enumerate in rule 29 exercise the power of revision under that rule, the power of review under rule 29-A is vested in the President only and not in any other authority.

15. Revision (Rule 29, CCA Rules)

15.1. The following authorities may at any time, either on their motion or otherwise, call for records of any enquiry and revise any order

made under the CCA Rules:-

(1) the President, or

(2) the Comptroller and Auditor General, in the case of a Government servant serving in the Indian Audit and Accounts Department, or

(3) The Member (Personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Services Board and Member (Personnel) Telecommunications Board in the case of a Government servant serving in or under the Telecommunications Board, or

(4) The Head of a department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariat or the P&T Board), under the control of such head of a department, or

(5) The appellate authority, within six months of the date of the order proposed to be revised, or

(6) Any other authority specified in this behalf by the President by a general or special order and within such time as may be prescribed in such general order or special order.

15.2. No power of revision shall be exercised by the Comptroller & Auditor General, the Member (Personnel), Postal Services Board, Member (Personnel), Telecommunication Board or the head of the department, as the case may be unless : -

(i) the authority which made the order in appeal, or

(ii) the authority to which an appeal would lie where no appeal

has been preferred; is subordinate to him.

15.3. A revising authority after passing an order of revision becomes functus officio and cannot again revise its own order. B(64)

16. **Orders by the Revising Authority**

16.1. After considering all the facts and circumstances of the case and the evidence on record the revising authority may pass any of the following orders:-

a) confirm, modify or set aside the order; or

b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case ; or

d) pass such other orders as it may deem fit.

16.2. No order imposing or enhancing any penalty should be made by revising authority unless the Government servant has been given a reasonable opportunity of making a representation against the penalty proposed. If it is proposed to impose or enhance the penalty to one of the major penalties, and if an inquiry under Rule 14 has not been held, such an inquiry should be held before imposing punishment.

16.3. The UPSC will be consulted before orders are passed in all cases where such consultation is necessary.

16.4. The orders passed by the revising authority should be a self-contained speaking and reasoned order, as stated in para 8.2.

17. Procedure for revision (Rule 29, CCA Rules)

17.1. An application for revision will be dealt with as if it were an appeal under the CCA Rules.

17.2. No revision proceedings shall commence until after the expiry of the period of limitation for an appeal, or if an appeal has been preferred already, until after the disposal of the appeal.

18. Review by the President (Rule 29-A CCA Rules).

The President may, at any time, either on his own motion or otherwise, review any order passed under the CCS(CCA) rules, 1965, including an order passed in revision under Rule 29, 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 his notice. This is subject to the provision that no order imposing or enhancing any penalty shall be made by the President unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties or to enhance the minor penalty imposed by the order sought to be reviewed to any of the major penalties and if an enquiry under rule 14 of CCS(CCA) Rules, 1965, has not already been held in the case, no such penalty should be imposed except after such an enquiry and except after consultation with the Union Public Service Commission, where such consultation is necessary.

19. Consultation with the Central Vigilance Commission

In such cases where the UPSC is not to be consulted the cases at appeal/revision stage should be referred to the Central Vigilance Commission where the appellate/revising authorities propose to modify or set aside the penalty imposed in a case in which the Central Vigilance Commission was earlier consulted. It will not be necessary to consult

the Central Vigilance Commission in cases, where the appellate/revising authority decides not to set aside or modify a penalty imposed by a disciplinary authority. Moreover, so long as the appellate/revising authority while modifying the penalty imposed by the disciplinary authority on the advice of the CVC, still remains within the parameter of the 'major' or 'minor' penalty, earlier advised by the Commission, there is no need to consult the Commission again, as such a modification does not have the effect of departing from their advice. B(105)

The Commission should also be informed of the final outcome of all appellate/revision/review proceedings, if as a result of such proceedings, the penalties imposed on the earlier advice of the Commission are set aside or modified.

20. Petitions, memorials addressed to the President

The procedure to be followed in dealing with petitions and memorials addressed to the President is contained in the instructions published in the Ministry of Home Affairs Notification No.40/5/50-Ests(B), dated 8th September, 1954. B(5)