# A BOOK FOR ENQUIRY OFFICERS ON DISCIPLINARY PROCEEDINGS

(In concurrence to The Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999)

राज्य स्वास्थ्य एवं परिवार कल्याण संस्थान, उ0प्र0

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**STATE INSTITUTE OF HEALTH AND FAMILY WELFARE, UTTAR PRADESH**

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## STATE INSTITUTE OF HEALTH AND FAMILY WELFARE, UTTAR PRADESH

## DEPARTMENT OF MEDICAL, HEALTH AND FAMILY WELFARE, GOVERNMENT OF UTTAR PRADESH

**Disclaimer:** This book is an exhaustive but limited edition for disciplinary proceedings in concurrence to The Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999. The cited Hon'ble Courts direction and other prescribed rules are subject to interpretation in view of updated rules and law from time to time.



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“The cost of discipline is always

**LESS** than the price of regret.

So, self discipline is the

**BIGGEST** instrument for success in life.”

- Dr. APJ Abdul Kalam.

# MESSAGE

**Shri Brajesh Pathak**
**Hon'ble Deputy Chief Minister**
**Minister of Medical Health and Family Welfare**
**Department Government of Uttar Pradesh**

Conduct and discipline are essential measures to be taken to build up sound personnel system. Hence, a provision for discipline through preventive, punitive and participative approaches is required to be build up in every organization so as to enhance effectiveness and productivity.

Since all government servant due to their nature of aberrant behavior and free thoughts sometimes cannot be expected to conduct themselves with equal zeal in an unimpeachable manner, a provision for disciplinary action is made in every department.

The sensitization of enquiry officers on principle of natural justice with the non-conjecture notion that every individual has right to be heard and defence himself/herself against the disciplinary proceedings. This book will allow the dimensions for recognizing sensitive approach towards the charged officer and just enquiry can be achieved through imparting skills and positive attitude of the enquiry officers.

I am glad that State Institute of Health and Family Welfare, Uttar Pradesh has developed a comprehensive book with ethical approach for just trial of cases against the charged government servant.

**(Brajesh Pathak)**

# MESSAGE

**Shri Mayankeshwar Sharan Singh**

**Hon'ble State Minister**
**Medical Health and Family**
**Welfare Department Government of Uttar Pradesh**

Misconduct, or non-conforming behaviour, as it is sometimes called, can be tackled through preventive actions, punitive actions and surveillance. While preventive and surveillance actions help in creating an enabling environment, the punitive action adds to it through deterrence

All this, however, does not mean that consideration of fairness and justice should be lost sight of in taking a disciplinary action against an employee. On the contrary, suitable machinery and procedure should be provided so as to eliminate every possibility of personal prejudices

SIHFW is playing the pivotal role in enhancing skills with positive mindsets of enquiry officers by setting an example of good governance in the department of health and family welfare, through this book

I wish team SIHFW success in their endeavors for imparting training of departmental enquiry officers for conducting just and reasonable disciplinary proceedings.

**(Mayankeshwar Sharan Singh)**

# FOREWARD

**Shri Partha Sarthi Sen Sharma**

**Principal Secretary**
**Department of Medical, Health and Family Welfare**
**Government of Uttar Pradesh**

Good Governance is based on there being a high moral standard of conduct among the public servants. All officials are expected to adhere to the principles of integrity, fairness, appropriate conduct, neutrality, punctuality and devotion to duty. So, if the public servants who are the backbone of the government's welfare measures are undermined by indiscipline and misconduct will stall the progress of development programs.

Optimum performance in any organistion depends on the willingness with which employees carry out the instructions and the way they conform to the rules of conduct established to aid the successful attainment of the organisation's objectives.

This book for Enquiry Officers on disciplinary proceeding is a torch bearer to conduct departmental proceedings with positive and sensitive approach towards the principle of natural justice. I wish that the book will enhance the skills of Enquiry officers dampening the lapses involving gross or willful negligence, recklessness, exercise of discretion without or in excess of powers/jurisdiction, cause of undue loss or a concomitant gain to an individual or a set of individuals/a party or parties and flagrant violation of systems and procedures.

**(Partha Sarthi Sen Sharma)**

# PREFACE

**Dr. Mannan Akhtar**

**Special Secretary**
**Department of Medical, Health and Family Welfare**
**Government of Uttar Pradesh**

The U.P. Government Servant's Conduct Rules, 1956 is a professional conduct for government employee is used for diverse set of action such as-restrictions on political activities, relationship with press, radio and outsiders, criticism of the Government, restrictions on public demonstrations, present restrictions on matters of property, private business and investment etc. that fall under the purview of conduct rules.

"No organisation is so perfect, no executive so ingenious, no personnel system so infallible that any of them can continuously avoid some measures of punishment for wrongful behaviour or poor performance of employees". Since all the Government servant cannot be expected to conduct themselves with equal zeal in an unimpeachable manner, a provision for disciplinary action is initiated against them that require non biased attitude and principle of Natural Justice.

I Congratulate Dr. Rajaganapathy R., Director, State Institute of Health and Family Welfare, Uttar Pradesh for developing guidebook on disciplinary proceedings that will enable the efficiency for the role of Enquiry officers under the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999.

**(Dr. Mannan Akhtar)**

# MESSAGE

**Dr. Lilly Singh**

**Director General**
**Medical and Health Services**
**Uttar Pradesh**

Misconduct, or non-conforming behaviour, as it is sometimes called, can be tackled through preventive actions, punitive actions and surveillance. While preventive and surveillance actions help in creating an enabling environment, the punitive action adds to it through deterrence.

However, despite all of this, disciplinary action against an employee should still take fairness and justice into account.In contrast, appropriate equipment and procedures ought to be made available to completely eliminate any possibility of individual preconceptions.

The enquiry procedures are long, tedious and onus of proving indiscipline lies on the government. The cases take a lot of time. During the process, the employee remains demotivated and out of action in case of suspension. This results in double loss to the government in terms of losing his man hours on one hand and wasting resources on disciplinary proceedings on the other.

To reduce the time and resources on disciplinary proceedings this book developed by State Institute of Health and Family Welfare, Uttar Pradesh is a ready rekoner to enquiry officers handling cases on disciplinary proceedings.

**(Dr. Lilly Singh)**

# MESSAGE

**Dr. Renu Srivastava Varma**

**Director General Family Welfare**
**Directorate of**
**Family Welfare Uttar Pradesh**

Ethics is knowing the difference between what you have a right to do and what is right to do. Ethical conduct must be served equally and impartially. The sense of impartiality, fairness and justice are embedded in our ethical heritage. Acts that smack of favoritism only, undermine the faith of people in administration. Public servants must try to work in harmony and co-operation with representative institutions and voluntary organisations so that there is greater rapport with the people and there is no breakdown of communication between the working of the system and the requirements or aspirations of the citizens.

The internal working and administration of government agencies and offices must be consistent with these modes of behaviour, that is, a sense of fair play and involvement within the organisation will ensure a satisfactory style of functioning in relation to the public outside in general. Hence the competency to be addressed here is of Empathy and Fairness.

It has been seen many a time that the appointing authorities as well as employees are unaware of the details of the disciplinary procedures resulting in many problems including judicial scrutiny. Since employees are expected to conform to rules and regulations and behave in a responsible manner, it is essential that these rules and regulations are properly and carefully communicated to them. Therefore periodic refresher training can address this issue and this book will cater the procedural adherence at par. In a way this book will act as the catalyst to head towards ethical conducts and a better future.

My best wishes!

**(Dr. Renu Srivastava Varma)**

# MESSAGE

**Dr. Anita Joshi**

**Director General (Training)**
**Medical, Health and Family Welfare**
**Uttar Pradesh**

All said and done, it is not rules that make a good civil servant but his/ her own standards of conduct imposed by his/ her own conscience, the 'esprit de corps' and tradition of the service and by the examples of his/ her fellows and those set-in authority and by the watchfulness of public opinion.

The disciplinary flaws are prevented from germinating and taking root with the assistance of training interventions. The Gaps and shortcomings in attitudinal change and skill upgradation require training in areas which are not clearly defined
– "the Grey Areas". These Grey Areas are development of behavioural competencies of enquiry officers, imparting knowledge on ethical aspects of a enquiry officers role and explain how value-based management is required to bring transparency in day- to-day functions on disciplinary proceedings.

State Institute of Health and Family Welfare, Uttar Pradesh has developed a exhaustive book on disciplinary proceedings on Domain , Functional and Behavioural competencies of the person who occupies the role of Enquiry officers under the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999.

**(Dr. Anita Joshi)**

# ACKNOWLEDGEMENT

**Dr. Rajaganapathy R.**

**Director**
**State Institute of Health and Family Welfare**
**Uttar Pradesh**

Discipline is the force that prompts an individual to observe the rules, regulations and procedures which are deemed to be necessary to the attainment of an objective; it is force or fear of force which restrains an individual or a group from doing things which are deemed to be destructive of group objectives. It is also the exercise of restraint or the-enforcement of penalties for the violation of group regulations.

Disciplinary action means the administrative steps taken to correct the misbehavior of the employee in relation to the performance of his/ her job. Corrective action is initiated to prevent the deterioration of individual inefficiency and to ensure that it does not spread to other employees

State Institute of Health and Family Welfare, Uttar Pradesh in its journey of expediting relevant materials for every subject, I thank Dr. Manish Singh, Assistant Professor, Training for putting an effort in authoring and developing a illustrative book on disciplinary proceedings and the role of Enquiry officers under the subsequent rules.

**(Dr. Rajaganapathy R.)**

# INDEX

# DISCIPLINARY PROCEEDINGS: CONTEXT AND OVERVIEW

Human resource is perhaps the most valuable asset of any organisation. It is the human resource which exploits other resources in the organisation so as to achieve the organisational objectives. The aim of the Human Resource Department, by whatever name it is known such as Personnel Department, P&IR, etc, is to get the best out of the human resource of the organisation. To achieve this purpose, there are many sub-systems in the Human Resource Department such as Grievance Handling, Counseling, Performance Appraisal, Career Planning, Training & Development, etc.

Reward and Punishment system is one of the sub-systems under the Human Resource System which is essential that every organisation, whether government or semi-government or private, should have a well established reward and punishment system to ensure that the people are made to work towards the fulfillment of the organisational goals. While the reward system will encourage the employees to work better towards the achievement of

organisational goals, punishment system is used to prevent people from working against the organisational goals.

Misconduct, or non-conforming

behaviour, as it is sometimes called, can be tackled in many ways such as counseling, warning, etc. In extreme cases such as, criminal breach of trust, theft, fraud, etc. the employer is also at liberty to initiate action against the employee, if the misconduct of the latter falls within the purview of the penal provisions of the law of the land. However such proceedings generally conducted by the State agencies, are time consuming and call for a high degree of proof. In addition to the above option, the employer also has an option to deal with the erring employee within the terms of employment. In such an eventuality, the employee may be awarded any penalty which may vary from the communication of displeasure, to the severance of the employer-employee relationship i.e. dismissal from service.

Disciplinary authorities play a vital role in this context. Efficiency of the disciplinary authorities is an essential pre-requisite

for the effective functioning of the reward and punishment function, more specifically the latter half of it.

There was a time when the employer was virtually free to hire and fire the employees. Over a period of time, this common law notion has gone. Today an employer can inflict punishment on an employee only after following some statutory provisions depending upon the nature of the organisation. Briefly, the various statutory provisions which govern the actions of different types of organisation are as under:

(a) Government: Part XIV of the Constitution relates to the terms of

employment in respect of persons appointed in connection with the affairs of the State. Any action against the employees of the State Government should conform to these Constitutional provisions, which confer certain protections on the Government servants. These provisions are applicable only to the employees of the various Ministries, Departments and Attached and Subordinate Offices. Further, the employees, being citizens of the country also enjoy Fundamental Rights guaranteed under Part III of the

Constitution and can enforce them though the Writ jurisdiction of the Courts. In addition to the constitutional provisions, there are certain rules which are applicable to the conduct of the proceedings for taking action against the erring employees. The Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 cover a vast majority of the State Government employees. Besides, there are also several other Rules which are applicable to various sections of the employees in a number of services.

(b) Semi Governmental Organisations: By this, we mean the Public Sector Undertakings and Autonomous Bodies and Societies controlled by the Government. Provisions of Part XIV of the Constitution do not apply to the employees of these Organisations. However, as these organisations can be brought within the definition of the term 'State' as contained in Article 12 of the Constitution, the employees of these organisations are protected against the violation

of their Fundamental Rights by the orders of their employer. The action of the employer can be challenged by the employees of these organisations on the grounds of arbitrariness, etc. These organisations also have their own sets of rules for processing the cases for conducting the disciplinary proceedings against their employees.

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

Although The Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 apply only to a limited number of employees in the Government, essentially these are the codification of the Principles of Natural Justice, which are required to be followed in any quasi-judicial proceedings. Even the Constitutional protections which are contained in Part XIV of the Constitution are the codification of the above Principles. Hence, the procedures which are followed in most of the Government and semi-governmental organisations are more or less similar. This book is predominantly based on the The Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999.

Complexity of the statutory provisions, significance of the stakes involved, high proportion and frequency of the affected employees seeking judicial intervention, high percentage of the cases being subjected to judicial scrutiny, huge volume of case law

on the subject - are some of the features of this subject. These, among others have sparked the need for a ready reference material on the subject.

**HENCE THIS BOOK.**

# ROLE OF DISCIPLILNARY AUTHORITIES

**Who is Disciplinary Authority?**

The term Disciplinary Authorities refers to such authorities who have been entrusted with powers to impose any penalty on the employees. In respect of the organizations falling under the purview of The Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999, the term Disciplinary Authority is defined in Rule 2 (e) of The Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 as the authority competent to impose on a government servant any of the penalties specified in Rule 11. In this book, The Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 is henceforth referred to as "the Rules". Disciplinary authority is defined with reference to the post held by the employee. Disciplinary authorities are specified in Rule 6 of the Rules. Thus there may be more than one disciplinary authority in every organization.

**What are the kinds of Disciplinary Authorities?**

The Disciplinary Authorities is the one who can impose all penalties on the employees as prescribed in the rule- 3 of the rules.

**What are the powers and responsibilities of the Disciplinary Authorities?**

Although it is not explicitly stated

anywhere, main responsibility of the Disciplinary Authority is to ensure discipline in the organization. Towards this, the disciplinary authorities are required to identify acts of indiscipline and take appropriate remedial action such as counseling, cautioning, admonition, imposition of penalties, criminal prosecution, etc.

**What is the relationship between Appointing Authority and Disciplinary Authority?**

Appointing Authorities are empowered to impose major penalties. It may be recalled that Article 311 clause (1) provides that no one can be dismissed or removed from service by an authority subordinate to the Authority which appointed him. In fact under most of the situations, the powers for imposing major penalties are generally entrusted to the Appointing Authorities. Thus Appointing Authorities happen to be disciplinary authorities. However there may be other authorities who may be empowered only to impose minor penalties. Such authorities are often referred to as lower disciplinary authorities for the sake of convenience. In this book, the term Disciplinary Authority has been used to signify any authority that has been empowered to impose penalty. Thereby the term includes appointing authorities also.

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

The Rule 2(a) under the rules laid down the procedure for determining the role of an

Appointing Authority. Besides, it must also be borne in mind that Appointing Authority goes by factum and not by rule. i.e. where an employee has been actually appointed by an authority higher than the one empowered to make such appointment as per the rules, the former shall be taken as the Appointing Authority in respect of such employee.

**What should be the over-all approach of the Disciplinary Authority?**

Disciplinary authorities are expected to act like a Hot Stove, which has the following characteristics:

- Advance warning – One may feel the radiated heat while approaching the Hot stove. Similarly, the Disciplinary Authority should also keep the employees informed of the expected behavior and the consequences of deviant behavior.

- Consistency: Hot stove always, without exception, burns those who touch it. Similarly, the disciplinary authority should also be consistent in approach. Taking a casual and lenient view during one point of time and having rigid and strict spell later is not fair for a Disciplinary Authority 5.

- Impersonal: Hot stove treats all alike. It does not show any favouritism or spare anybody. Similarly, the disciplinary authority should treat all employees alike without any discrimination. (You may feel that past good conduct of the

delinquent employee is taken into account while deciding the quantum of penalty. This I

- not in contravention of the rule of impersonal approach. Even past conduct has to be taken into account in respect of all the employees, without discrimination.)

- Immediate action: Just as the hot stove burns the fingers of those who touch it without any time lag, the disciplinary authority is also expected to impose penalty without delay. This will make the delinquent employee link the misconduct to the penalty; besides it also sends a message that misconduct will be appropriately dealt with.

**How to find out who is the Disciplinary Authority?**

- Firstly, it must be remembered that the Disciplinary authority is determined with reference to the employee proceeded against. Rule 3 of the Rules 1999 lay down the details of the disciplinary authorities in respect of various grade of employees in different services in the Government. The Governor, the Appointing Authority, the Authority specified in the Schedule of the Rules (to the extent specified therein) or by any other authority empowered in this behalf by any general or special order of the Governor may impose any of the Penalties specified in Rule 3. Appointing Authority as mentioned in the Rules must be

understood with reference to rule2 (a) of the Rules. The question as to who is the appropriate disciplinary authority must be raised and answered not only while issuing charge sheet but also at the time of imposing penalty because there might have been some change in the situation due to delegation of powers, etc. in the organization.

- **What are the functions of the Disciplinary Authority?**
- Disciplinary authority is required to discharge the following functions:
- (a) Examination of the complaints received against the employees
- (b) Deciding as to who is to be appointed as the investigating authority
- (c) Taking a view as to whether there is any need to keep the delinquent employee under suspension
- (d) Taking a view on the preliminary investigation report and deciding about the future course of action thereon, such as warning, training, counseling, initiation of major or minor penalty proceeding, prosecution, discharge simpliciter, etc.
- (e) Consultation with the Commission where necessary
- (f) Deciding whether there is any need to issue of charge sheet or penalty may be imposed dispensing with enquiry under the appropriate provision

- (g) Issue of charge sheet where necessary - Rule 7(iii)

- In the case of minor penalty proceedings, deciding, either suo motu or based on the request of the delinquent employee, as to whether it is necessary to conduct a detailed oral hearing.

- (i) In the case of minor penalty proceedings, forming tentative opinion about the quantum of penalty based on the representation of the delinquent employee, if any, and ordering for a detailed oral hearing where necessary.

- (ii) After issue of charge sheet, deciding as to whether there is any need to conduct enquiry, or the matter may be closed, or the penalty can be imposed, based on the unambiguous, unconditional and unqualified admission by the delinquent employee.

- (iii) Passing final order imposing penalty or closing the case, based on the response of the delinquent employee

- (iv) Appointment of Enquiry Authority and Presenting Officer, where necessary

- (v) Taking a view on the request, if any, of the delinquent employee for engagement of a Legal Practioner as Defence Assistant

- (vi) Making originals of all the listed documents available to the Presenting Officer so that the same could be presented during the inspection of documents.

- (vii) Examination of the enquiry

report to decide as to whether the same needs to be remitted back to the enquiry authority - Rule 9(1)

- (viii) Deciding as to whether the conclusion arrived at by the Inquiring Authority is acceptable and to record reasons for disagreement if any – Rule 9(2)
- (ix) Consultation with the Commission where necessary – Rule 16
- (x) Forward the enquiry report to the delinquent employee together with the reasons for disagreement, if any and the recommendations of the Commission where applicable - Rule 9(4)
- (xi) Considering the response of the delinquent employee to the enquiry report and the reasons for disagreement and taking a view on the quantum of penalty or closure of the case. Rule 9(4)
- (xii) Pass final order in the matter – Rule 10
- (xiii) On receipt of copy of the appeal from the penalized employee, prepare comments on the Appeal and forward the same to the Appellate Authority together with relevant records. - Rule 11
- **What happens if any of the functions of the Disciplinary Authority has been performed by an authority subordinate to the disciplinary authority?**
- Where a statutory function has been performed by an authority who has not been empowered to

perfrom it, such action without jurisdiction would be rendered null and void. Read the Judgment of Honble Supreme Court in its Judgment dated 5th September 2013, in Civil Appeal No. 7761 of 2013 (Union of India & Ors. Vsd. B V Gopinathan)

- **What knowledge is required for the efficient discharge of the duties in conducting disciplinary proceedings?**

- Disciplinary Authority is required to be conversant with the following:

- Constitutional provisions under Part III (Fundamental Rights) and Part XIV (Services Under the Union and the States)

- Principles of Natural Justice

- The Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 or the relevant rules applicable to the organization

- Government of Uttar Pradesh Instructions relating to disciplinary proceedings

- Case law relating to disciplinary proceedings

# CONSTITUTIONAL PROVISIONS RELATING TO DISICPLINARY PROCEEDINGS

Part XIV of the Constitution relates to 'Services Under the Union and the States', wherein, Articles 309, 310 and 311 are relevant to disciplinary proceedings. Article 309 is an enabling provision which gives power to the legislature to enact laws governing the conditions of service of the persons appointed in connection with the affairs of the state.

Proviso to this Article provides that pending the enactment of the laws, the President may frame rules for the above purpose. The laws as well as the Rules to be framed for the purpose must be 'subject to the provisions of the constitution'. The Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 as well as several other service rules have been framed under the proviso to Article 309 of the Constitution.

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

prevail; otherwise, the tenure of appointment will depend upon the pleasure of the Governor.

Restriction on the Pleasure Doctrine is provided in a number of provisions of the Constitution in respect of high level functionaries. Some of the examples are Article124 [Tenure of Supreme Court judges], Article 148(2) [Tenure of High Court judges] Article 324 [The Chief Election Commissioner, Article 317 [Chairman and members of public service commission] who are holders of civil posts.

For the efficient administration of the State, it is absolutely essential that permanent public servants should enjoy a sense of security of tenure. The safeguard which Article 311(2) of the Constitution affords to the permanent public servants is no more than this that in case it is intended to dismiss, remove or reduce them in rank, a reasonable opportunity should be given to them of showing cause against the action proposed to be taken in regard to them. A claim for security to tenure does not mean security of tenure for dishonest, corrupt or inefficient public servants. The claim merely insists that before they are removed, the permanent public servants should be given an opportunity to meet the charge on which they are sought to be removed. Therefore, it seems that only two exceptions can be treated as valid in dealing with the scope and effect of the protection afforded by Article 311(2). If a permanent public servant is asked to retire on the ground that he has reached the age of superannuation which has been reasonably fixed, Article

311(2) does not apply because such retirement is neither dismissal nor removal of the public servant. If a permanent public servant is compulsorily retired under the rules which prescribe the normal age of superannuation and provide for a reasonably long period of qualified service after which alone compulsory retirement can be ordered, that again may not amount to dismissal or removal under Article 311(2) mainly because that is the effect of a long series of decisions of the Supreme Court. But where while reserving the power to the State to compulsorily retire a permanent public servant, a rule is framed prescribing a proper age of superannuation and another rule is added giving the power to the State to compulsorily retire a permanent public servant at the end of 10 years of his service, that cannot be treated as falling outside Article 311(2). The termination of the service of a permanent public servant under such a rule, though called compulsory retirement, is in substance, removal under Article 311(2). It is because it was apprehended that rules of compulsory retirement may purport to reduce the prescribed minimum period of service beyond which compulsory retirement can be forced against a public servant that the majority judgment in the case to Moti Ram Deka reported in AIR 1964 SC 600 clearly indicated that if such a situation arose, the validity of the rule may have to be examined and in doing so, the impugned rule may not be permitted to seek the protection of the earlier decisions of the Supreme Court in which the minimum qualifying period of service was prescribed as high as 25

years or the age of the public servant at 50 years. See: Gurdev Singh Sidhu v. The State of Punjab, AIR 1964 SC 1585 In respect of the multitude of ordinary Government Servants, a restriction on the Pleasure of the Governor is contained in the immediately following Article viz. Article 311. The first thing to be noted about Article 311 is that it does not apply to the defence personnel. The Supreme Court has clarified that even the civilians working in connection with the defence are not covered by the provisions of Article 311. It is also significant that even the rules framed under proviso to Article 309 cannot provide the protection under Article 311, to those employees who are not entitled to the protection under the said Article. In this connection, the following observations by the Honble Supreme Court in Union of India and another Vs. K.S. Subramanian [JT1988(4)SC681, 1989 Supp(1)SCC331] is relevant

It was, however, argued for the respondent that 1965 Rules are applicable to the respondent, first, on the ground that Rule 3(1) thereof itself provides that it would be applicable, and second, that the Rules were framed by the Governor to control his own pleasure doctrine, and therefore, cannot be excluded. This contention, in our opinion, is basically faulty. The 1999 Rules among others, provide procedure for imposing the three major penalties that are set out under Article 311(2). When Article 311(2) itself stands excluded and the protection there under is withdrawn there is little that one could do under the 1999 Rules in

favour of the respondent. The said Rules cannot independently play any part since the rule making power under Article 309 is subject to Article 311. This would be the legal and logical conclusion.

Article 311 basically grants two protections to the civilian government servants (other than the defence civilians, of course). The two protections relate to who and how. The first part of the Article provides that no person shall be dismissed or removed from service by an authority subordinate to the one by which he was appointed. Thus, the protection is that, before being sent out of service, a Government servant is entitled to have his case considered by the authority who is equal in rank to the one who appointed him to the service. If the penalty of dismissal or removal from service is imposed by an authority who is lower in rank than the Appointing Authority, the same will be unconstitutional. The following are some of the practical difficulties which may arise in complying with this provision:

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

(b) The power for making appointment to a grade keeps on changing. Twenty years ago, the power of making appointment to a grade was exercised by an officer of a certain level. Consequent to the decentralisation of powers, the

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

(c) A post has been abolished consequent to some re-organisation re-structuring of certain departments. The post so abolished was the Appointing Authority in respect of a number of levels. Who can exercise the powers of dismissal in such cases? The answers to these questions are contained in Rule 2(a) of the 1999 Rules and other statutory rules which have been framed under the Proviso to Article 309.

The second protection granted by Article311 is available in Clause 2 of the Article and it states how a Government Servant can be dismissed, or removed from service or reduced in rank. It provides that no one can be dismissed or removed from service or reduced in rank except after an enquiry. The same article also indicates that the above mentioned enquiry must satisfy the following two conditions:

(a) The individual concerned must be informed of the charges.

(b) Must be granted a reasonable opportunity of being heard in respect of those charges.

The phrase reasonable opportunity has not been defined in the Constitution; but the courts have clarified through a number of decisions that this implies that the accused has a right to:

- know the charge,
- know the evidence led by the

Disciplinary Authority in support of the charge

- inspection of documents,
- cross examine the witness deposing for the Disciplinary Authority
- lead evidence in defence, etc.
- Another important question relating to the applicability of Article 311 is, whether the article provides protection to permanent employees only or even the temporary employees are entitled for the protection. Although Article 311 does not specifically state as to whether the provisions are applicable to temporary employees also, the Supreme Court has clarified about the applicability of the protection. The law laid down by the Honble Supreme Court in the case of Parshottam Lal Dhingra Vs Union of India [AIR1958 SC 36] more than half a century ago is still applicable. As per the case law on the subject, the protection is available under any one of the under mentioned circumstances:
  - (a) Where there is a right to hold the post
  - (b) Where there is visitation of evil consequences

All permanent employees have a right to post and hence are entitled for this protection. As regards the temporary employees, even in their case, a reasonable opportunity of defence will have to be afforded if they are being visited by evil consequences. Thus, if a temporary

employee is discharged from service by giving him one month notice, without assigning any reason, the same may be permissible. If the order of discharge mentions any reasons having a bearing on the conduct or the competence of the employees, in such cases an enquiry will be necessary. In short, even probationers will be entitled to the protection of enquiry, if the order of discharge contains a stigma. As pointed out by the Hon'ble Supreme Court in the following passage in the case of Mathew P. Thomas Vs. Kerala State Civil Supply Corpn. Ltd. and Ors. [JT2003(2), (2003)3SCC263], the issue continues to be difficult to determine:

An order of termination simplicitor passed during the period of probation has been generating undying debate. The recent two decisions of this Court in Deepti Prakash Banerjee v.

MANU/SC/0101/1999: Satyendra Nath Bose National center for Basic Sciences, Calcutta and Ors. [1999]1SCR532 and Pavanendra Narayan Verma v. MANU/SC/0705/2001: Sanjay Gandhi PGI of Medical Sciences and Anr. (2002) ILLJ690SC, after survey of most of the earlier decisions touching the question observed as to when an order of termination can be treated as simplicitor and when it can be treated as punitive and when a stigma is said to be attached to an employee discharged during period of probation. The learned counsel on either side referred to and relied on these decisions either in support

of their respective contentions or to distinguish them for the purpose of application of the principles stated therein to the facts of the present case. In the case of Deepti Prakash Banerjee (supra), after referring to various decisions indicated as to when a simple order of termination is to be treated as "founded" on the allegations of misconduct and when complaints could be only as motive for passing such a simple order of termination. In para 21 of the said judgment a distinction is explained, thus:-

"21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such circumstances, the allegations would be a motive and not the foundation and the simple order of termination would be valid."

Article 311 also provides that under certain circumstances, a government servant may be dismissed or removed from service or reduced in rank without an

enquiry. These are contained in the second proviso to Article 311 (2). The circumstances under which the protection under Article 311 Clause 2 does not apply are as under:

(a) Where the penalty is being imposed on the ground of conduct which has led to his conviction on a criminal charge; or.

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

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

It is also relevant to note that the special circumstance when penalty may be imposed on a Government Servant without enquiry have been reproduced in Rule 16 of the The Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999.

There may be circumstances wherein a Government servant may be proceeded against in a criminal court. The criminal case might have been filed by the employer or the employee might have been tried for an offence he has committed in his private life. The provision mentioned above, grants power to the disciplinary authority to impose penalty without conducting enquiry if the Government servant has been convicted in a criminal case. In this connection, it is relevant to note that the standard of proof required in a criminal case is proof beyond reasonable doubt whereas in the departmental proceedings, the

standard of proof is preponderance of probability. Thus if an employee has been held guilty in a criminal case, it would be much more easier to establish the charge in a departmental proceedings. Conducting a departmental enquiry after the employee has been held guilty in a criminal case would, therefore, be an exercise in futility. Hence the power granted by the Second Proviso to Article 311 may be availed and appropriate penalty may be imposed on the employee. It must, however, be noted that this provision only grants a power to the disciplinary authority to impose the penalty without enquiry when the employee has been convicted in a criminal case. It is not mandatory for the disciplinary authority to dismiss the employee whenever he has been convicted in a criminal case. The authority concerned will have to go through the judgment and take a decision depending upon the circumstances of the case. While taking recourse to this provision, the disciplinary authority is under an obligation to issue a show cause notice to the Government Servant as required under the proviso to 1999 Rules. Besides, the quantum of penalty needs to be decided with due regard to the mandate of the Hon'ble Supreme Court that the right to impose penalty carries with it the duty to act justly.

In this connection it is worthy to bear in mind the observation of the Hon'ble Supreme Court in its legendary judgment in the case of Shankar Das Vs. Union of India [AIR 1985 SC 772, 1985(1)SCALE391, (1985)2SCC358, [1985]3SCR163,

1985(2)SLJ454(SC)]

The learned Magistrate First Class, Delhi, Shri Amba Prakash was gifted with more than ordinary understanding of law. Indeed he set an example worthy of emulation. Out of the total sum of Rs. 1,607.99 which was entrusted to the appellant as a Cash clerk, he deposited Rs. 1,107.99 only in the Central Cash Section of the Delhi Milk Scheme. Undoubtedly, he was guilty of criminal breach of trust and the learned Magistrate had no option but to convict him for that offence. But, it is to be admired that as long back as in 1963, when Section 235 of the CrPC was not on the Statute book and later refinements in the norms of sentencing were not even in embryo, the learned Magistrate gave close and anxious attention to the sentence which, in the circumstances of the case, could be passed on the appellant. He says in his judgment The appellant was a victim of adverse circumstances; his son died in February 1962, which was followed by another misfortune; his wife fell down from an upper storey and was seriously injured: it was then the turn of his daughter who fell seriously ill and that illness lasted for eight months. The learned Magistrate concluded his judgment thus : Misfortune dodged the accused for about a year... and it seems that it was under the force of adverse circumstances that he held back the money in question. Shankar Dass is a middle aged man and it is obvious that it was under compelling circumstances that he could not deposit the money in question in time. He is not a previous convict.

Having regard to the circumstances of the case, I am of the opinion that he should be dealt with under the Probation of Offenders Act, 1958.

It is to be learned that despite these observations of the learned Magistrate, the Government chose to dismiss the appellant in a huff, without applying its mind to the penalty which could appropriately be imposed upon him in so far as his service career was concerned. Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the Government the power to dismiss a person from service on the ground of conduct which has led to his conviction on a criminal charge". But, that power, like every other power, has to be exercised fairly, justly and reasonably. Surely the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a non-parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since Clause (a) of the second proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty is to be imposed on a Government servant or the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts of this case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical.

Another occasion when the disciplinary authority may impose penalty on the employee without

conducting any enquiry is when, the disciplinary authority, is satisfied, for reasons to be recorded, that it is not reasonably practicable to hold an enquiry. There are two conditions for invoking this provision viz. firstly, the disciplinary authority must be satisfied that it is not reasonably practicable to hold enquiry in a particular case and secondly, the authority must record the reasons for his decision. Although the Constitution does not require the communication of the reasons in the penalty order, it has been recommended in the judgments of the Supreme Court that it is desirable to communicate the reasons in the penalty order. This will obviate the prospects of the penalised employee contending that the reasons were fabricated after the issue of penalty order. It has been held in a number of decisions of the Hon'ble Supreme Court that orders imposing penalty under this clause will be invalid unless the reasons for dispensing with enquiry have been recorded. In this connection, the following judgments of the Hon'ble Supreme Court are relevant: (a) Reena Rani Vs. State of Haryana and Ors. 2012(3)SCALE519 (b) In Jaswant Singh v. State of Punjab [(1991) 1 SCC 362] the two-Judge Bench referred to the ratio of Union of India v. Tulsiram Patel [(1985) 3 SCC 398] and observed:

"The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a court of law, it is

incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer."

This provision can be of help during large scale violence, threat to the disciplinary authority or enquiry authority or the state witnesses, etc. Invoking this provision for mundane purposes such as avoiding delay, etc. may not be in order. Although the penalty order issued without enquiry may cause harm to the employee, the courts have held that the clause has been provided for the sake of a public good. In order to mitigate the harm done to the employee, the Hon'ble Supreme Court in the case of Union of India Vs Tulsiram Patel [AIR 1985 SC, (1985) 3 SCC 398 ] has ruled that in all such cases departmental appeal must be disposed of after giving him an opportunity of defence.

There is considerable divergence of opinion on the subject regarding the applicability of the above provision in cases of inability of the disciplinary authority to serve charge sheet because the whereabouts of the delinquent are not known. It is felt that the provision being contrary to the principles of Natural Justice, it would be appropriate to resort to them sparingly. In cases of prolonged unauthorized absence of the delinquent, it would be appropriate to publish the charge sheet in the local news paper and/or the web site of the organization, paste it in the door of the residence of the delinquent and the notice board of the organization, send

through registered post and have proof of all these things before proceeding ex-parte against the delinquent.

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

The nature of the extra ordinary power granted by the provisions under the second proviso to Article 311(2) has been explained by the Hon'ble Supreme Court in the following terms in Union of India (UOI) and Anr. Vs. M.M. Sharma [JT 2011 (4) SC 22, (2011)11SCC293]

The power to be exercised under Clauses (a), (b) and (c) being special and extraordinary powers conferred by the Constitution, there was no obligation on the part of the disciplinary authority to communicate the reasons for imposing the penalty of dismissal and not any other penalty. For taking action in due discharge of its responsibility for exercising powers under Clause (a) or (b) or (c) it is nowhere provided that the

disciplinary authority must provide the reasons indicating application of mind for awarding punishment of dismissal. While no reason for arriving at the satisfaction of the Governor, as the case may be, to dispense with the enquiry in the interest of the security of the State is required to be disclosed in the order, we cannot hold that, in such a situation, the impugned order passed against the Respondent should mandatorily disclose the reasons for taking action of dismissal of his service and not any other penalty.

Although the above mentioned provisions are applicable as such to the employees of the Ministries, departments and attached and subordinate offices only, yet the same are relevant to the employees of Public Sector Undertakings and the autonomous bodies as well. This is so, because similar provisions exist in the service rules relating to a number of PSUs and Autonomous bodies.

In addition to Part XIV of the Constitution (Articles 309 to 311), Part III of the Constitution is also relevant to the matter of disciplinary proceedings. Part III of the Constitution contains the Fundamental Rights. These are available against the actions of the State. The State is prohibited from denying the right to equality, etc. As per the current interpretation of Article 14, it strikes at the root of arbitrariness. Hence an employee affected by the arbitrary action of the State (which happens to be his employer) can file a writ petition alleging violation of the Right to equality. Article 21 of the

Constitution provides right to life and liberty. It states that no one shall be deprived of his right to life and liberty except in accordance with the procedure established by law. According to the present interpretation of the Hon'ble Supreme Court, the word 'life' occurring in Article 21 of the Constitution does not denote mere existence. 'Life' as mentioned in Article 21 relates to a dignified and meaningful life. Hence, the deprivation of employment may amount to the deprivation of life. Hence Article 21 indirectly provides that no one can be deprived of his employment except in accordance with the procedure established by law. Besides, the Hon'ble Supreme Court has also stated in the case of Maneka Gandhi Vs Union of India (AIR 1978 SC 578 ) that the phrase 'procedure established by law mentioned in the above Article refers to a procedure which is just, reasonable and fair and not any procedure which is arbitrary, whimsical or oppressive. Hence, there is a requirement for the Governmental and semi-governmental organisations to ensure that the employees are not deprived of their employment (i.e. life) by an arbitrary procedure. Care must be taken to ensure that a just, reasonable and fair procedure is followed in the disciplinary proceedings.

# PRINCIPLES OF NATURAL JUSTICE

## Introduction

Initially, the term Natural Justice referred to certain procedural rights in the English Legal System. Over a period of time, the content of the term has expanded and presently it connotes some basic principles relating to judicial, quasi judicial and administrative decision making. These principles are believed and practiced by all civilized societies for millennia. The view that Natural Justice can be traced back to over thousand years is not an exaggeration. The following observation of Justice V Krishna Iyer in Mohinder Singh Gill Vs. Chief Election Commissioner [1978 AIR 851, (1978) 3 SCC 405, 1978 SCR (3) 272] is adequate proof of this statement: It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of Authority. It is the bone of healthy government, recognised from earliest times and not a mystic testament of judge-made law. Indeed, from the legendary days of Adam-and of Kautilya's Arthasastra-the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the, roots of natural justice and its foliage are noble and not newfangled. Today its application must be sustained by current legislation, case- law or other extant principle, not the hoary

chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system. The dichotomy between administrative and quasi-judicial functions vis a vis the doctrine of natural justice is presumably obsolescent after Kraipak(1) in India and Schmit(2) in England.

Traditionally English Law recognized two principles of natural justice viz.

(I) Nemo debet esse judex in propria causa i.e No man shall be a judge in his own cause, or a suitor or the deciding authority must be impartial and without bias and

(ii) Audi alteram Partem i.e. hear the other side, or no one can be condemned unheard.

(iii)Over a period of time, a third principle has also emerged to the effect that Final orders must be speaking orders (Reasoned orders).

The first and the third principles mentioned above may be perceived as the corollary of the basic principle that Justice should not only be done but manifestly appear to have been done The Principles and general conditions.

Based on the above, the following four may be stated as the Principles of Natural Justice:

(a) No one can be condemned unheard

(b) No one can be a judge in his own case

(c) Justice should not only be done but should manifestly appear to have been done

(d) Final order must be speaking order

The nature, aim and scope of these principles, the extent of their applicability, etc. have been eloquently articulated by Justice K S Hegde in the case of A K Kraipak Vs Union of India[(1969) 2 SCC 262]

(1) The rules of natural justice operate in areas not covered by any law validly made, that is, they do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceeding also, ….

(2) The concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or the body of persons appointed for that purpose.

Whenever a complaint is made before a court that some principle of natural justice had been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

The rule that enquiries must be held in good faith and without bias, and not arbitrarily or unreasonably, is now included among the principles of natural justice.

**Audi Alteram Partem**

Observations of the Hon'ble Supreme Court in the following terms in the case of Maneka Gandhi Vs. Union of India, [1978 AIR 597, 1978 SCR (2) 621] establishes that the right to be heard is an inherent one and can be claimed even when not granted by statutory provisions: It is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. This principle was laid down by this Court in the State of Orissa v. Dr. (Miss) Binapani Dei & Ors.[ (1) AIR 1967 S.C. 1269 at 1271] in the following words.

"The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore arise from the very nature of the function intended to be performed, it need not be shown to be super- ,added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise

of such power. If the essentials of justice be ignored and an order to the prejudice of a Person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

Audi Alteram Patem which is basically a protection against arbitrary administrative action comprises within itself a number of rights. This rule implies that the accused has a right to

(a) know the charge

(b) inspect documents

(c) know the evidence

(d) cross examine witnesses

(e) lead evidence

In essence, the protections granted under Article 311 (2) of the Constitution as well the The Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 are codification of the above principle of natural justice.

As seen above, the principles of natural justice supplement law and not supplant law. Thus they can be exempt by express statutory provisions or by necessary implications. One instance of exemption by statutory provisions is exemption prescribed by the second proviso to Article 311 (2) which explicitly states that “this clause shall not apply”.

In Maneka Gandhi Vs. Union of India, [1978 AIR 597, 1978 SCR

(2) 621] the contention of the petitioner was that her Passport was

impounded without giving her an opportunity of defence. Apparently, providing an opportunity of defence before impounding the Passport might defeat the very purpose of the action, because the moment the authorities initiate action for impounding the Passport, it would be possible for the person concerned to flee abroad on the strength of the Passport, which is yet to be impounded. There may be extra-ordinary situations when Postdecisional hearing might be provided instead of Pre-decisional hearing.

The components of the right to hearing as enumerated above are general in nature. They should not be perceived as inviolable essential ingredients of all administrative actions, In the case of Hira Nath Mishra and Ors Vs. Principal Rajendra Medical College, AIR 1973 SC 1260, (1973) IILLJ 111 SC, (1973) 1 SCC 805, three students had challenged the order of the Principal expelling them from the college for two academic sessions allegedly on charges of molestation of girl students. One of the submissions of the petitioners was that "… the enquiry, if any, had been held behind their back; the witnesses who gave evidence against them were not examined in their presence, there was no opportunity to cross- examine the witnesses with a view to test their veracity…". Repelling the submissions of the Appellants, the Hon'ble Supreme Court held as under:

"Rules of natural justice cannot remain the same applying to all conditions. We know of statutes in

India like the Goonda Acts which permit evidence being collected behind the back of the goonda and the goonda being merely asked to represent against the main charges arising out of the evidence collected. Care is taken to see that the witnesses who gave statements would not be identified. In such cases there is no question of the witnesses being called and the goonda being given an opportunity to cross- examine the witnesses. The reason is obvious. No witness will come forward to give evidence in the presence of the goonda. However unsavoury the procedure may appear to a judicial mind, these are facts of life which are to be faced. The girls who were molested that night would not have come forward to give evidence in any regular enquiry and if a strict enquiry like the one conducted in a court of law were to be imposed in such matters, the girls would have had to go under the constant fear of molestation by the male students who were capable of such indecencies. Under the circumstances the course followed by the Principal was a wise one. The Committee, whose integrity could not be impeached, collected and sifted the evidence given by the girls. Thereafter the students definitely named by the girls were informed about the complaint against them and the charge. They were given an opportunity to state their case. We do not think that the facts and circumstances of this case require anything more to be done. There is no substance in the appeal which must he dismissed. The appeal is dismissed. There shall be no orders as to costs."

## Rule of Bias

The principle that No one can be a judge in his own case is also known as the rule of bias. In essence, it implies that an interested party shall not play a role in decision making. General rule that Enquiry Officer should not be a witness in the proceedings is a corollary of this rule. In this connection, it is interesting to note the following observation of Justice Das in State of Uttar Pradesh Vs. Mohammad Nooh [1958 AIR 86, 1958 SCR 595] "…the spectacle of a judge hopping on and off the bench to act first as judge, then as witness, then as judge again to determine whether he should believe himself in preference to another witness, is startling to say the least."

Generally three kinds of bias are considered as important:

**a) Personal Bias** – One may be personally interested in the outcome of the case. If one is required to act as the complainant as well as the decision making authority, the outcome is likely to be biased

**b) Pecuniary bias** – A person who has a monetary interest in an issue should not deal with the case. If one is a share holder in a company, it would be improper for him/her to decide whether a contract should be given to that company or some other company.

**c) Bias of subject matter** – One who has certain strong notions/ views about certain subjects might not be suitable for deciding issues relating to that subject. For example one having strong male chauvinistic views, may not be suitable for dealing with issues

relating to harassment of women employee Rule of bias must be borne in mind at the time of appointment of Enquiry Officer and dealing with the request of the Charged Officer for change of Enquiry officer.

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

- Waiver
- Necessity
- Statutory Power
- Where the party concerned has waived its right to question the proceedings for violation of the rule of bias, the issue cannot be raised subsequently. Similarly there may be situation when a person may not be able to withdraw from the decision making process due to reasons of necessity. In the case of Ashok Kumar Yadav and Ors. etc. etc. Vs. State of Haryana and Ors. etc. etc. (Date of Judgment 10/05/1985) [1987 AIR 454, 1985 SCR Supl. (1) 657, 1985 SCC (4) 417 1985 SCALE (1)1290], the petitioners before the High Court had challenged the selection made by the State Public Service Commission on, inter alia, the following ground:

- "The argument of the petitioners was that the presence of Shri R.C. Marya and Shri Raghubar Dayal Gaur on the interviewing committee gave rise to an impression that there was reasonable likelihood of bias in favour of the three candidates related to Shri
- R.C. Marya and Shri Raghubar Dayal Gaur and this had the

effect of vitiating the entire selection process. This argument was sought to be supported by the petitioners by relying on the decisions reported in D.K. Khanna v. Union of India & Ors. Surinder Nath Goel v. State of Punjab and M. Ariffudin v. D.D. Chitaley & Ors."

- The above submission based on allegation of bias, was rejected by the Hon'ble Supreme Court on the ground of necessity in the following terms:

- "The principle which requires that a member of a selection Committee whose close relative is appearing for selection should decline to become a member of the selection committee or withdraw from it leaving it to the appointing authority to nominate another person in his place, need not be applied in case of a Constitutional Authority like the Public Service Commission, whether Central or State. If a member of a Public Service Commission was to withdraw altogether from the selection process on the ground that a close relative of his is appearing for selection, no other person save a member can be substituted in his place. And it may sometimes happen that no other member is available to take the place of such member and the functioning of the Public Service Commission may be affected. When two more members of a Public Service Commission are holding a viva voce examination, they are functioning not as individuals but as the Public Service Commission. Of course, it must

be made clear that when a close relative of a member of a Public Service Commission is appearing for interview, such member must withdraw from participation in the interview of that candidate and must not take part in any discussion in regard to the merits of that candidate and even the marks or credits given to that candidate should not be disclosed to him."

- Notwithstanding the above exemptions, it is essential that no person having any stake in the outcome of the disciplinary proceedings act as the Enquiry Authority nor exercise the powers of Disciplinary Authority. Justice should manifestly appear to have been done.

- This was explained by the Hon'ble Supreme Court in Ashok Kumar Yadav and Ors. etc. etc. Vs. State of Haryana and Ors. etc. etc. (Date of Judgment 10/05/1985) [1987 AIR 454, 1985 SCR Supl. (1) 657, 1985 SCC (4) 417 1985 SCALE (1)1290], in the following terms:

- "The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The basic principle underlying this rule is that justice must not only be done but must also appear to

be done and this rule has received wide recognition in several decisions of this Court. It is also important to note that this rule is not confined to cases where judicial power stricto sensu is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. Justice is not the function of the courts alone; it is also the duty of all those who are expected to decide fairly between contending parties. The strict standards applied to authorities exercising judicial power are being increasingly applied to administrative bodies, for it is vital to the maintenance of the rule of law in a welfare state where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentalities of the State should discharge their functions in a fair and just manner."

- As already stated above, the Hon'ble Supreme Court had in the above case decided the submissions relating to allegation of bias on the ground of necessity.

- **Speaking orders**

- The advantages of a speaking order were summarized by the Hon'ble Supreme Court as under in the case of Travancore Rayons Vs Union of India [AIR 1971 SC 862] in the following manner: Disclosure guarantees consideration

- Introduces clarity

- Excludes or minimises arbitrariness
- Satisfaction of the party
- Enables appellate forum to exercise control
- This principle of natural justice requires that following orders issued in the course of disciplinary proceedings, must be speaking orders:
- Orders disposing of the allegations of bias on the part of Enquiry Authority and requesting for change
- Orders dealing with the request for appointment of a Legal Practioner as a Defence Assistant
- Orders dealing with the request for appointment of a person from outstation as a Defence Assistant
- Orders rejecting the request for defence documents/witnesses
- Orders deciding on request for adjournment
- Final orders imposing penalty
- Orders of the Appellate, Revisionary or Reviewing authority
- Components of speaking order and general considerations to be borne in mind while drafting a speaking order are dealt with in the chapter on Drafting of final orders.
- **Condition precedent and limitations**
- There was a time when the courts held that mere violation of

principles of Natural Justice was adequate reason for setting aside the entire proceedings. However, the above approach is no more in vogue. One of the questions before the Hon'ble Supreme Court in Managing Director ECIL Vs. Karunakar [AIR 1994 SC 1074, JT 1993 (6) SC 1, (1994) ILLJ 162 SC] was

- "what is the effect on the order of punishment when the report of the Enquiry Officer is not furnished to the employee and what relief should be granted to him in such cases."

- Hon'ble Supreme Court addressed this question through the doctrine of prejudice in the following terms: "Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

- It may be appreciated from the foregoing that although the principles of natural justice are very important in nature, there is no uniform rule regarding their applicability. This has been

stated with ample clarity in the following paragraph in the case Oriental Bank of Commerce and Anr. Vs. R.K. Uppal (Decided On: 11.08.2011) [JT2011(9)SC1, 2011 (3), (2011)8SCC695 ] in the following terms:

- "It is now fairly well settled that the requirements of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with and so forth. In the words of Ramaswami, J. (Union of India and Anr. v. P.K. Roy and Ors.

- MANU/SC/0049/1967 : AIR 1968 SC 850) the extent and application of the doctrine of natural justice cannot be imprisoned within the straitjacket of a rigid formula. The application of the doctrine depends upon the nature of jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case."

- Briefly, all these above mentioned rules can be condensed into a dictum of two words: **"Be fair"**. In this regard, one is reminded of the most important advice given by a father to his son in the passage popularly known as Polonius advice to Laertes in the immortal play of Hamlet:

- This above all: to thine own self be true,

- And it must follow, as the night the day,
- And it must follow, as the night the day,
- Thou canst not then be false to any man.
- William Shakespeare.That is the essence of the Principles of Natural Justice:

**Be true to yourself**

# HANDLING COMPLAINTS

**What is a complaint?**

- In State Government parlance, any source of information about a misdeed in the organization is a complaint against a Government Servant about his/her conduct which is blameworthy in the context of conduct rules, would be misconduct and if a Government Servant conducts himself/herself in a way inconsistent with the due and faithful discharge of his duty, it is a misconduct

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

- Thus, an inspection report, press clipping, property transaction reports under the Conduct Rules, etc. fall within the ambit of complaint, if they throw any light on the misdeed in the organization. Even in the complaints received from the public or the employees of the organization, there used to be umpteen instances when the author might not have intended that to be a complaint but the communication provided valuable information about an organized crime in the organization and therefore it was treated and registered as a complaint. Some such

instances are:

- (a) A letter was received from a former employee of the organization seeking arrears of salary for the part of the month in which he was relieved on acceptance of his resignation. While trying to take some reference number from the old pay bill, it turned out that somebody was collecting pay in the name of the resigned employee continuously for several months after the said employee resigned from service.

- (b) A representation was received from an employee stating that his name was missing in the seniority list of group 'D' employees of the organization. While attempting to check the reasons for this omission, it emerged that the employee in question and several others were appointed through forged appointment orders issued by a racket.

- **What is the first action on receipt of a complaint?**

- On receipt of a complaint, Disciplinary Authority shall obtain and record

- Nature of Offence such as illegal gratification of any kind by corrupt means or by abusing official position, possession of assets disproportionate to known sources of income, misappropriation, forgery, cheating and other criminal offences

- Cases of unauthorized absence, over-stayed, insubordination, use of abusive language, etc. and

gross or willful negligence; recklessness in decision making; blatant violations of systems and procedures; exercise of discretion in excess, where no ostensible public interest is evident; failure to keep the controlling authority/superiors informed in time

- These are some of the irregularities where the disciplinary authority should carefully study the case and weigh the circumstances to come to a conclusion whether there is reasonable ground to doubt the integrity of the officer concerned.

- **What are the two parts of the register for recording complaints?**

- One part of the register is meant for registering the complaints in respect of category of (A),(B),(C),(D) Government Servant

- **How to deal with anonymous and pseudonymous complaints?**

- As a general rule, no action is to be taken by the administrative authorities on anonymous/pseudonymous complaints received by them. It is also open to the administrative authorities to verify by enquiring from the signatory of the complaint whether it had actually been sent by him so as to ascertain whether it is pseudonymous. If any department/organisation proposes to look into any verifiable facts alleged in such complaints, it may refer the

matter to the Commission seeking its concurrence through the head of the organisation, irrespective of the level of employees involved therein. Besides, any complaint referred to by the Commission is required to be investigated and if it emerges to be a pseudonymous, the matter must be reported to the Commission.

- **What action is required in the case of false complaints?**

- If a complaint is found to be malicious, vexatious or unfounded, departmental or criminal action as necessary should be initiated against the author of false complaints.

- **What are the various ways in which a complaint can be dealt with?**

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

- (a) file it without or after investigation; or

- (b) to pass it on to the CBCID/Police for investigation / appropriate action; or

- (c) to pass it on to the concerned administrative authority for appropriate action; or

- (d) to take up for detailed investigation by the departmental vigilance agency.

- A Complaint will be treated as disposed off either on issue of charge-sheet or final decision for closing or dropping the complaint.

# PRELIMINARY INVESTIGATION

**What is preliminary investigation?**

Preliminary investigation, also known as Fact Finding Enquiry, is the process of checking the veracity of a complaint.

**What is the purpose of preliminary investigation?**

Following are purposes of a preliminary investigation:

- To check the veracity of the complaint
- If the complaint is true, to collect evidence in support of the charge.
- **What are the various options for conducting Preliminary Investigation?**
- Preliminary Investigation may be carried out either departmentally or through Police authorities.
- **What are the cases which may be investigated departmentally?**

Cases involving allegations of misconduct other than an offence, or a departmental irregularity or negligence, and those wherein alleged facts are capable of verification or enquiry within the department/office should be investigated departmentally.

**What are the cases to be referred to CBI/CBCID or Police?**

The following types of cases are to be referred to CBI/CBCID or the police:

(a) Allegations involving offences punishable under law which the Special Police Establishment of the State Governments such as CBCID/Economic Offence Wings etc. are authorized to investigate; such as offences involving bribery, corruption, forgery, cheating, criminal breach of trust, falsification of records, possession of assets disproportionate to known sources of income, etc.

(b) Cases in which the allegations are such that their truth cannot be ascertained without making inquiries from non- official persons; or those involving examination of non- Government records, books of accounts etc.; and

(c) Other cases of a complicated nature requiring expert police investigation

**What is the course of action when the complaint contains the above mentioned types of cases?**

Where the complaint contains the above mentioned types of issues, decision should be taken in consultation with the Central Bureau of Investigation as to which of the allegations should be dealt with departmentally and which should be investigated by the Central Bureau of Investigation. If there is any difficulty in separating the allegations for separate investigation in the manner suggested above, the better course would be to entrust the whole case

to the Central Bureau of Investigation.

**Can a case be simultaneously investigated by the department as well as CBI?**

No. Parallel investigation should be avoided. Once a case has been referred to and taken up by the CBI for investigation, further investigation should be left to them. Further action by the department in such matters should be taken on completion of investigation by the CBI on the basis of their report. However, if the departmental proceedings have already been initiated on the basis of investigations conducted by the departmental agencies, the administrative authorities may proceed with such departmental proceedings. In such cases, it would not be necessary for the CBI to investigate those allegations, which are the subject matter of the departmental enquiry proceedings, unless the CBI apprehends criminal misconduct on the part of the official(s) concerned.

**Who can be assigned the task of conducting preliminary investigation?**

There are no specific instructions as to who can conduct preliminary investigation. While normally the Disciplinary Authority may be entrusted with the task of preliminary investigation, where technical knowledge is required, preliminary investigation may be assigned to an officer having the requisite knowledge. The task may be assigned to an officer of appropriate status if the complaint is against a senior public servant. Seniority/status of the officer

conducting preliminary investigation will also be helpful in eliciting information from those who can provide that.

**What precautionary action will facilitate preliminary investigation?**

At times it may be advantageous to transfer the suspected public servants from the charge they are holding to pre-empt prospects of the evidence being tampered or destroyed. But this must be done with requisite tact so that the action does not alert the forces which have played mischief, even before the first step is taken in preliminary investigation.

**What are the steps involved in conducting preliminary Investigation?**

Following steps may be helpful for conduct of preliminary investigation:

(a) Study and analyse the complaint.

(b) List the facts that need to be verified and the evidence in support thereof.

(c) Check whether any site inspection is necessary. [e.g. If the allegation relates to some construction.

(d) Identify if any evidence relating to the complaint is perishable or likely to undergo change in due course of time [If the crop standing on the land is to be verified, it must be done before harvesting; in certain cases, evidence may be lost during monsoon. etc.]

(e) List the documents and persons

who can provide information on the matters raised in the complaint.

(f) Where a surprise check is involved, carry out the same without any delay. Conduct of surprise inspection, where necessary, should be the first visible action of the preliminary investigation. Otherwise, site inspection may be taken up after taking over of documents, as explained in the next sub-para.

(g) In a single swift move, collect all the relevant documents. This is all the more necessary because, once the interested parties come to know that a preliminary investigation is going on, efforts will be made to tamper with the documents. In case any of the documents are required for further action by the authorities concerned, authenticated copies may be made available to the authorities concerned. If the above course of action is not possible for any reason, the documents must be left to the custody of an officer in the relevant branch of the organization making him/her responsible for the safety of the documents.

(h) Where relevant, write to the complainant, if not already done by the administrative authorities. Ask if he/she can provide any additional information or evidence. In case the complaint has been triggered by an aggrieved individual, (say an unsuccessful bidder, unsuccessful candidate for recruitment) the complainant may provide necessary documents with a sense of vengeance!

(i) Talk to the persons who are likely to have information about the issue. Record the proceedings and

get it signed by the deposer. This phase of the preliminary investigation is perhaps most challenging because one may come across several reluctant and unwilling persons. The preliminary investigation officer should use all his tact and persuasive skills for eliciting information even from the unwilling witnesses.

(j) While it is not mandatory to talk to the suspected public servant at the stage of preliminary investigation, it may be a desirable course of action in most of the cases.

(k) Study the information collected so as to formulate views as to whether a conclusion could be drawn about the veracity of the allegations.

(l) If no conclusion could be arrived at, repeat the steps mentioned above

(m) Prepare investigation report and submit with the original documents collected or created during the investigation.

**Does the failure to contact the suspected public servant amount to violation of the principles of natural justice?**

As the purpose of preliminary investigation is to ascertain truth there is no need for contacting the suspected public servant. As is well known, no penalty can be imposed based on the findings of a preliminary investigation without issue of a formal charge sheet and conduct of formal departmental proceedings. In the entire gamut of activities during disciplinary proceedings, Preliminary

Investigation has a unique feature in that it is completely at the discretion of the administrative authorities. It is not covered by any statutory provision; not even the principles of natural justice are applicable to it. This has been explicitly elucidated by the Hon'ble Supreme Court in Kendriya Vidyalaya Sangathan Vs. Arunkumar Madhavrao Sinddhaye and Anr. [ JT2006(9)SC549, (2007)1SCC283, 2007(3)SLJ41(SC)]

"Therefore, in order to ascertain the complete facts it was necessary to make enquiry from the concerned students. If in the course of this enquiry the respondent was allowed to participate and some queries were made from the students, it would not mean that the enquiry so conducted assumed the shape of a formal departmental enquiry. No articles of charges were served upon the respondent nor the students were asked to depose on oath. The High Court has misread the evidence on record in observing that articles of charges were served upon the respondent. The limited purpose of the enquiry was to ascertain the relevant facts so that a correct report could be sent to the Kendriya Vidyalaya Sangathan.

The enquiry held can under no circumstances be held to be a formal departmental enquiry where the non-observance of the prescribed rules of procedure or a violation of principle of natural justice could have the result of vitiating the whole enquiry."

**What to do if a need arises for contacting officials of other department while conducting**

**preliminary investigation?**

In such an eventuality, the investigation officer may seek the assistance of the department concerned, for providing facility for interrogating the person(s) concerned and/or taking their written statements.

**What attributes will make a successful preliminary investigation officer?**

**(a) Knowledge** – of not only the rules and regulations but also practices and procedures pertaining to the organization and prevailing at the relevant point of time. For example, if the office copy of the document is not available in the file, the preliminary investigation officer should know that it was customary for the copies of such letters to be endorsed to certain subordinate organizations or place copies in certain folders. An officer with the knowledge of the practices and procedures will manage to get copy of the letter from such sources as well.

**(b) Imagination** – the preliminary investigation officer has to visualize where from the relevant information relating to the transaction is likely to be available and who all are likely to know about it. For example, if there is some suspicion about the family details of the employee, the preliminary investigation officer should visualize that such details may be available in the attestation form, GPF advance applications, children education allowance applications, LTC claims, medical reimbursement claims, nomination forms, etc.

**(c) Tenacity** – tenacity is the quality of possessing "never-say-die" spirit. While conducting preliminary investigation, the officer may come across several dead ends. He/she takes a clue and proceeds. After some progress, it may abruptly endwithout giving any definite conclusion. Preliminary investigation officer will have to pursue another thread. Even if this ends abruptly, the officer must pursue yet another clue.

**(d) Eye for details** – "Look for the abnormal" is the catch phrase for the preliminary investigation officer.

**What are the components of the report of the preliminary investigation?**

I. Introduction: [e.g.: The undersigned was directed vide order No. ……. Dated …. of ….. to carry out preliminary investigation of the alleged irregularities listed in the inspection report no.,…..dated …. of the ….. regarding ……]

**ii. Gist of the allegations:** [e.g.: Prima facie it appeared from the inspection report that there was mismatch between the physical delivery of goods and the entry in the records. It seemed that the above discrepancy was attributable to the connivance and active participation of some of the officers of the material division….]

**iii. Points needing proof:** [e.g.: The investigation was required to establish whether there was any manipulation of marks in the recruitment test held during Jul 2010 and who were responsible for the manipulation]

**iv. Gist of action taken by the preliminary investigation officer:** [preliminary investigation officer was required to obtain documents and talk to officials of …… office. This was arranged with the kind help of Shri xxx of …. As the allegations pertained to availing of subsidy without actually cultivating the crops for which it was granted, there was a need for site inspection also. The investigation officer carried out site inspection at …… on …….]

**v. Evidence collected:** [preliminary investigation officer collected 58 documents as listed in the Annexure A to this report and talked to the 17 persons listed in Annexure B. out of the above, the documents listed at S. No. 25 to 33 were obtained from …… Oral witnesses at S. No. 9 to 12 are employees of ….. who were contacted through the kind intervention of Shri ]

**vi. Evaluation of evidence:** [this is the heart and soul of the report] Whether the Suspected Public Servant was contacted? If so what is his version?

vii. Evidence controverting the version of the Suspected public servant

**What is time limit for completion of preliminary investigation?**

Preliminary investigation is expected to be completed within three months.

# ACTION ON INVESTIGATION REPORT

**What are the possible actions on the Preliminary Investigation Report?**

Possible actions on the Preliminary Investigation report are as under:

**(a) Closure of the case:** In case the investigation report indicates that no misconduct has been committed, the case may be closed.

**(b) Action against false complaints:**

**(c) Administrative action:** This includes issue of warning, clarification to the decision making authorities, etc.

**(d) Minor Penalty Proceedings**

**(e) Major penalty proceedings**

**(f) Criminal prosecution**

**What actions are to be taken against persons filing false complaints?**

If a complaint against a public servant is found to be malicious, vexatious or unfounded, it should be considered seriously whether action should be taken against the complainant for making a false complaint. In case false complaints have been filed by Government servants, initiation of suitable departmental action against them may be considered by making reference to the authorities having disciplinary powers over such Government Servants. Possibility of launching criminal prosecution

under section 182 of IPC by lodging a complaint under section 195(1)(a) of Criminal Procedure must be explored.

संख्या 13/1/97–का-1/1997

प्रेषक,

जगजीत सिंह,
सचिव,
उत्तर प्रदेश शासन।

सेवा में,

समस्त प्रमुख सचिव/सचिव,
उत्तर प्रदेश शासन।

लखनऊ, दिनांक : 9 मई, 1997

विषय : समूह "क" (श्रेणी - I) के अधिकारियों के विरुद्ध प्राप्त शिकायती-पत्रों का निस्तारण।

महोदय,

कार्मिक अनुभाग–1

कतिपय स्रोतों से शासन के विभिन्न स्तरों पर अधिकारियों के विरुद्ध शिकायतें प्राप्त होती रहती हैं। इनमें कुछ मा0 सांसदों/विधायकों से प्राप्त शिकायतें होती है तथा कुछ अन्य स्रोतों/व्यक्तियों से प्राप्त होती है। कतिपय मामलों में यह देखा गया है कि शिकायती-पत्रों में अंकित शिकायत कर्ता का नाम फर्जी है तथा शिकायतें निराधार व तथ्यहीन है। कतिपय मामलों में किसी विशिष्ट व्यक्ति के पैड का दुरुपयोग करते हुए फर्जी हस्ताक्षर से शिकायती पत्र दिये जाते हैं।

2–अतः बेनामी अथवा फर्जी शिकायतों की बढ़ती प्रवृत्ति को दृष्टि में रखते हुए सम्यक विचारोपरान्त शासन द्वारा निर्णय लिया गया है कि समूह "क" (श्रेणी-1) के सभी अधिकारियों के विरुद्ध प्राप्त शिकायती-पत्रों के निस्तारण हेतु निम्नलिखित प्रक्रिया अपनायी जाय :–

(1) विशिष्ट व्यक्तियों से प्राप्त शिकायती-पत्रों के सम्बन्ध में कार्यवाही आरम्भ करने से पूर्व सम्बन्धित विशिष्ट व्यक्ति को पत्र भेजकर यह पुष्टि करा ली जाय कि पत्र उन्हीं के द्वारा हस्ताक्षरित है और शिकायतों के सम्बन्ध में उनका सन्तोष हो गया है कि शिकायतें तथ्यों पर आधारित हैं।

(2) अन्य स्रोतों/व्यक्तियों से प्राप्त शिकायतों के सम्बन्ध में शिकायतकर्ता से इस बारे में एक शपथ-पत्र उपलब्ध कराने तथा शिकायतों की पुष्टि हेतु समुचित साक्ष्य उपलब्ध कराने को कहा जाय और इसके प्राप्त होने के उपरान्त ही आगे कार्यवाही की जाय।

3–अतः आपसे यह अनुरोध करने का मुझे निदेश हुआ है कि समूह "क" (श्रेणी-1) के अधिकारियों के विरुद्ध प्राप्त शासन के विभिन्न स्तरों पर लम्बित/प्राप्त होने वाले समस्त शिकायती-पत्रों का उपरोक्त निर्णयों के अनुसार ही निस्तारण सुनिश्चित करने का कष्ट करें।

भवदीय,
जगजीत सिंह,
सचिव।

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संख्या 13/1/97–का-1/1997, तद्दिनांक

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित :–

(1) प्रमुख सचिव, सतर्कता विभाग, उ0प्र0 शासन।
(2) समस्त विभागाध्यक्ष/प्रमुख कार्यालयाध्यक्ष, उ0प्र0
(3) सचिवालय के समस्त अनुभाग।

आज्ञा से,
के0 एम0 लाल,
विशेष सचिव।

I_Sa Niyukti_2012_Data 1

संख्या-1/ 2015/ 13/ 9/ 98/ का-1-2015

प्रेषक,

आलोक रंजन,
मुख्य सचिव,
उत्तर प्रदेश शासन ।

सेवा में,

1. समस्त प्रमुख सचिव/ सचिव, उत्तर प्रदेश शासन।
2. समस्त विभागाध्यक्ष/ प्रमुख कार्यालयाध्यक्ष, उत्तर प्रदेश।
3. समस्त मण्डलायुक्त/ जिलाधिकारी, उत्तर प्रदेश।

कार्मिक अनुभाग-1 लखनऊ : दिनांक 22 अप्रैल,2015

विषय :-विभागीय कार्यवाही के मामलों का नियमानुसार निस्तारण।

महोदय,

सरकारी सेवकों के विरूद्ध विभागीय कार्यवाही करने तथा दण्ड देने की प्रक्रिया का निर्धारण उत्तर प्रदेश सरकारी सेवक (अनुशासन एवं अपील) नियमावली, 1999 के द्वारा किया गया है। विभागीय कार्यवाही के मामलों का शीघ्रता से निस्तारण किये जाने हेतु शासनादेश संख्या-7/ 8/1977-कार्मिक-1, दिनांक 30.07.1977, शासनादेश संख्या-13/13/92 -का-1/1993, दिनांक 10.02.1993 तथा शासनादेश संख्या-770/ का-1-2011-13(1)2011, दिनांक 23.09.2011 निर्गत किये गये हैं।

**2-** उल्लेखनीय है कि उत्तर प्रदेश सरकारी सेवक (अनुशासन एवं अपील) नियमावली, 1999 के नियम-3 के अनुसार शास्तियॉ दो प्रकार की हैं। लघु शास्तियॉ एवं दीर्घ शास्तियॉ । लघु शास्तियॉ अधिरोपित करने के लिए प्रक्रिया का निर्धारण उक्त नियमावली के नियम-10 में प्राविधानित किया गया है। उपरोक्त नियमावली के नियम-2(घ) में "विभागीय जॉच" को परिभाषित किया गया है। "विभागीय जॉच" का तात्पर्य संदर्भित नियमावली के नियम-7 के अधीन की गयी जॉच से है। संबंधित कार्मिक के विरूद्ध लगाये जाने वाले आरोपों में जहॉ नियुक्ति प्राधिकारी/ दण्डन प्राधिकारी का यह समाधान हो जाय कि आरोप साबित होने पर संबंधित कार्मिक को दीर्घ शास्ति दिया जाना उपयुक्त नहीं होगा, अपितु केवल लघु शास्ति ही पर्याप्त है, ऐसी स्थिति में नियमावली के नियम-7 में उल्लिखित प्रक्रिया का पालन नहीं किया जायेगा, बल्कि नियमावली के नियम-10 की प्रक्रिया का पालन किया जायेगा। नियम-10 की प्रक्रिया एक सूक्ष्म प्रक्रिया है तथा स्वत: स्पष्ट है। परन्तु यदि नियुक्ति प्राधिकारी/ दण्डन प्राधिकारी का यह समाधान हो जाय कि संबंधित कार्मिक के विरूद्ध आरोप साबित होने पर दीर्घ शास्ति/ शास्तियॉ भी अधिरोपित की जा सकतीं हैं, तो नियमावली के नियम-7 में विहित प्रक्रिया का पालन किया जायेगा।

**3-** शासन के संज्ञान में यह तथ्य आया है कि उपर्युक्त नियमावली में विहित प्राविधानों का सम्यक् अनुपालन नहीं किया जा रहा है। इस तथ्य का संज्ञान मा0 उच्च न्यायालय, इलाहाबाद द्वारा

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1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अत: इस पर हस्ताक्षर की आवश्यकता नहीं है ।

2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.nic.in से सत्यापित की जा सकती है ।

रिट याचिका संख्या-1314(एस0बी0)/ 2011 उत्तर प्रदेश राज्य व अन्य बनाम् आशीष निरंजन व अन्य एवं रिट याचिका संख्या-25240/2014 कप्तान सिंह बनाम् उत्तर प्रदेश राज्य व अन्य में पारित आदेश क्रमश: दिनांक 22.07.2011 एवं 14.05.2014 में भी लिया गया है।

**4-** उपर्युक्त नियमावली तथा मा0 उच्च न्यायालय के आदेशों को दृष्टिगत रखते हुए एवं नियम-7 के तहत प्रारम्भ विभागीय जॉच के मामलों का शीघ्रता से निस्तारण विषयक उपरोक्त शासनादेशों को अवक्रमित करते हुए सम्यक् विचारोपरान्त शासन द्वारा लिये गये निम्नलिखित निर्णय/ प्रक्रिया से आपको अवगत कराने का मुझे निदेश हुआ है :-

(1) किसी कार्मिक के विरूद्ध की जाने वाली जॉच हेतु जॉच अधिकारी पदनाम के आधार पर नियुक्त किया जाय, ताकि जॉच अधिकारी के स्थानान्तरण/ प्रोन्नति/ सेवानिवृत्ति आदि की दशा में पुन: जॉच अधिकारी की नियुक्ति की औपचारिकता में लगने वाले समय के कारण सम्भावित विलम्ब व श्रम से बचा जा सके।

जॉच से संबंधित स्थान पर तैनात अधिकारी को ही सामान्यतया जॉच अधिकारी नियुक्त किया जाय और यदि यह सम्भव न हो तो उस स्थान के निकटतम् स्थान में नियुक्त अधिकारी को जॉच अधिकारी नियुक्त किया जाय, ताकि जॉच अधिकारी को जॉच के स्थान पर आने-जाने में कठिनाई न हो।

(2) आरोप पत्र यथाशीघ्र निर्गत किया जाय, जिसमें समस्त आरोप संक्षेप में अभिलिखित किये जायॅ। उल्लिखित आरोपों में किसी प्रकार की अस्पष्टता नहीं होनी चाहिए।

(3) आरोप पत्र के साथ प्रासंगिक अभिलेख/ साक्ष्य भी अपचारी कार्मिक को उपलब्ध कराया जाय।

(4) यदि आरोप पत्र के साथ अभिलेखों/ साक्ष्यों की प्रतियॉ देना युक्तिसंगत कारणों से सम्भव न हो पा रहा हो तो ऐसी स्थिति में अपचारी कार्मिक को अभिलेखों के निरीक्षण का अवसर प्रदान किया जाय। इसके लिए जॉच अधिकारी तिथि, समय तथा स्थान निर्धारित करेगा तथा अभिलेखों को देखने की स्वतंत्रता सुनिश्चित करेगा।

अपचारी कार्मिक से अपना लिखित स्पष्टीकरण 15 दिन से एक माह के अन्दर प्रस्तुत करने को कहा जायेगा। अत्यन्त विशेष परिस्थितियों में एक माह का और समय दिये जाने पर विचार कर लिया जाय, परन्तु किसी भी दशा में दो माह से अधिक समय न दिया जाय। अपचारी कार्मिक के नियंत्रक प्राधिकारी द्वारा यह सुनिश्चित किया जाय कि अपचारी सरकारी सेवक को प्रशासकीय कार्यों में इस सीमा तक न लगाये रखें कि उसे यह कहने का मौका मिले कि वह अपने प्रशासकीय/ शासकीय कार्य में व्यस्त होने के कारण समय से उत्तर नहीं दे सका। इस हेतु विभागीय कार्यवाही में आरोप पत्र देते समय ही नियंत्रक अधिकारी को यह निर्देश दे दिये जायॅ कि वे अपचारी सरकारी सेवक से निर्धारित अवधि में स्पष्टीकरण प्रस्तुत करना सुनिश्चित करायें और इसके लिए उसे निर्धारित अवधि के भीतर समुचित समय अवश्य उपलब्ध करायें। यदि जॉच, पूर्व नियुक्ति के स्थान से सम्बन्धित है तो अपचारी सरकारी सेवक को उस स्थान पर जाने की अनुमति दे दी जाय, जहॉ उसे अभिलेख आदि देखने हों।

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1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अत: इस पर हस्ताक्षर की आवश्यकता नहीं है ।

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(5) आरोपित सरकारी सेवक से जवाब प्राप्त होने के पश्चात् जॉच अधिकारी जॉच की कार्यवाही हेतु तिथि, समय तथा स्थान निर्धारित करेगा। जॉच अधिकारी द्वारा आरोपों के समर्थन में साक्ष्य प्रस्तुत किये जायेंगे, जिसमें संबंधित व्यक्तियों/ गवाहों से मौखिक एवं अभिलेखीय साक्ष्य सम्मिलित होंगे।

(6) मौखिक या लिखित साक्ष्य लेने के समय जॉच अधिकारी द्वारा अपचारी कार्मिक को गवाहों से प्रतिपरीक्षा (क्रास एग्जामिन) का अवसर दिया जायेगा। जॉच अधिकारी अपचारी कार्मिक को साक्ष्य के अंतर्गत दिये गये अभिलेखों की स्वीकार्यता के संबंध में आपत्ति प्रकट करने का अवसर भी देगा।

(7) जॉच में साक्ष्य लेने की कार्यवाही पूर्ण हो जाने के पश्चात् जॉच अधिकारी अपचारी कार्मिक को अपने बचाव हेतु समय, दिन और स्थान निर्धारित करेगा, जिसमें मौखिक और अभिलेखीय साक्ष्य सम्मिलित होंगे। इसके पश्चात् व्यक्तिगत सुनवाई का अवसर भी प्रदान करेगा। अधिकतम तीन माह के भीतर जॉच पूरी कर ली जाय।

(8) साक्ष्यों (विभागीय तथा अपचारी कर्मचारी दोनों के साक्ष्य) के विश्लेषण के पश्चात् जॉच अधिकारी अपने विवेक और ज्ञान के आधार पर आरोप साबित होते हैं अथवा नहीं साबित होते हैं, के संबंध में अपनी जॉच आख्या (जॉच अधिकारी के नियुक्ति प्राधिकारी/ दण्डन प्राधिकारी से भिन्न होने पर) नियुक्ति प्राधिकारी/ दण्डन प्राधिकारी को अग्रसारित करेगा।

(9) नियुक्ति प्राधिकारी/ दण्डन प्राधिकारी जॉच आख्या का परीक्षण करेगा तथा जॉच अधिकारी की आख्या से सहमत होने पर अपचारी कार्मिक को एक कारण बताओ नोटिस, जिसके साथ जॉच आख्या की प्रति भी आवश्यक रूप से लगी हो, निर्गत करेगा तथा अपचारी कार्मिक को नोटिस का जवाब दो सप्ताह के भीतर देने को कहेगा। यदि आवश्यक हो तो व्यक्तिगत सुनवाई का अवसर भी देगा।

(10) यदि नियुक्ति प्राधिकारी/ दण्डन प्राधिकारी जॉच अधिकारी की आख्या से सहमत नहीं है तब असहमति के संबंध में अपनी प्रस्तावित राय युक्तिसंगत कारणों के आधार पर देगा तथा अपचारी कार्मिक से अपनी प्रस्तावित राय पर दो सप्ताह के भीतर उत्तर की अपेक्षा करेगा। यदि आवश्यक हो तो व्यक्तिगत सुनवाई का अवसर भी देगा।

(11) आरोपित सरकारी सेवक का अभ्यावेदन प्राप्त होने या अभ्यावेदन प्रस्तुत करने की निर्धारित अवधि बीतने, जैसी भी स्थिति हो, के पश्चात् अथवा सुनवाई के पश्चात् अथवा दोनों के पश्चात् जिन मामलों में लोक सेवा आयोग से परामर्श आवश्यक नहीं है, वहॉ दो सप्ताह के अन्दर नियुक्ति प्राधिकारी/ दण्डन प्राधिकारी के द्वारा अन्तिम आदेश जारी किया जाय।

जिन मामलों में लोक सेवा आयोग से परामर्श आवश्यक है, वहॉ दण्डादेश पारित करने के पूर्व प्रकरण लोक सेवा आयोग को परामर्शार्थ संदर्भित किया जाय और उनसे छः सप्ताह के अन्दर परामर्श प्राप्त किया जाय तथा परामर्श प्राप्त होने के पश्चात् दो सप्ताह के भीतर दण्डादेश पारित कर दिया जाय।

(12) जॉच की कार्यवाही में आरोप सिद्ध करने का भार विभाग के ऊपर ही होगा तथा आरोप सिद्ध न होने पर अपचारी कार्मिक को अपने निर्दोष होने का प्रमाण देने की आवश्यकता नहीं होगी।

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1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अतः इस पर हस्ताक्षर की आवश्यकता नहीं है ।

2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.nic.in से सत्यापित की जा सकती है ।

(13) उत्तर प्रदेश लोक सेवा आयोग (कृत्यों का परिसीमन) विनियम, 1954 (यथासंशोधित) के अनुसार श्री राज्यपाल द्वारा दिये जाने वाले निम्नलिखित दण्डों के संबंध में लोक सेवा आयोग से परामर्श प्राप्त किया जायेगा :-

(एक) वेतनवृद्धि रोकना,

(दो) सरकार को हुई आर्थिक हानि की पूर्ण रूप से या आंशिक रूप से वेतन या पेंशन से वसूली,

(तीन) पदावनति,

(चार) सेवा से हटाया जाना,

(पॉच) सेवा से पदच्युत किया जाना,

(छः) पेंशन से सम्बद्ध नियमों के अधीन ग्राह्य पेंशन को कम किया जाना या रोकना या प्रत्याहरण:

प्रतिबन्ध यह है कि यदि राज्यपाल द्वारा आज्ञा संविधान के अनुच्छेद-311 के खण्ड (2) के परन्तुक (ग) के अधीन या राज्यपाल अथवा उच्च न्यायालय द्वारा समय-समय पर यथासंशोधित उत्तर प्रदेश डिसिप्लनरी प्रोसीडिंग्स (एडमिनिस्ट्रटिव ट्रिव्यूनल), रूल्स, 1947 के अधीन दी जाती है या सत्यनिष्ठा का प्रमाण-पत्र रोके जाने के फलस्वरूप वेतनवृद्धि रोकी जाती है तो आयोग से परामर्श करना आवश्यक न होगा :

अग्रेतर प्रतिबन्ध यह है कि यदि किसी मामले में आयोग ने पहले ही किसी प्रक्रम पर आज्ञा दिये जाने के बारे में परामर्श दे दिया हो और राज्यपाल की राय में उसके बाद निर्णयार्थ कोई नया महत्वपूर्ण प्रश्न पैदा न हुआ हो, तो राज्यपाल द्वारा अन्तिम आज्ञा दिये जाने से पहले आयोग से पुन: परामर्श करना आवश्यक न होगा।

(14) किसी विभागीय जॉच की कार्यवाही के फलस्वरूप एक से अधिक दण्ड दिये जाने के आदेश पृथक-पृथक निर्गत नहीं किये जायेंगे। एक या एक से अधिक दण्ड दिये जाने की स्थिति में भी दण्डादेश का प्रभाव समेकित रूप से एक ही माना जायेगा।

(15) सेवा से हटाना अथवा सेवा से पदच्युत किये जाने के आदेश तात्कालिक प्रभाव से प्रभावी होंगे। तात्कालिक प्रभाव की तिथि वह होगी जब आदेश संबंधित कार्मिक को संसूचित कर दिया जाय। संसूचित किये जाने की विधि यथास्थिति, निम्नवत् होगी :-

(क) आदेश व्यक्तिगत रूप से सरकारी सेवक को प्राप्त करा दिया जाय।

(ख) उक्त (क) के अनुसार संभव न होने पर रजिस्ट्रीकृत डाक द्वारा कार्यालय अभिलेखों में उल्लिखित पते पर तामील कर दी जाय। तामीली की तिथि वह होगी जिस तिथि को आदेश तामीली के लिए डाक के हवाले कर दिया जाय और सक्षम अधिकारी को उस आदेश में कोई परिवर्तन करने का अधिकार न रह जाय।

(ग) उपरोक्त (क) और (ख) के अनुसार भी तामीली संभव न होने पर आदेश को व्यापक परिचालन वाले किसी दैनिक समाचार पत्र में प्रकाशन द्वारा ।

(16) विभागीय कार्यवाही एवं आपराधिक मामले की कार्यवाही पृथक-पृथक अथवा साथ-साथ की जा सकती है। इस सम्बंध में आपराधिक आरोप की प्रकृति एवं अन्य सुसंगत तथ्यों पर सम्यक् विचारोपरान्त दण्डन प्राधिकारी द्वारा समुचित निर्णय लिया जायेगा।

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1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अत: इस पर हस्ताक्षर की आवश्यकता नहीं है ।

2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.nic.in से सत्यापित की जा सकती है ।

(17) यदि किसी अनियमितता/ आरोप के विषय में कार्यवाही प्रारम्भ होने के पश्चात् दण्ड देकर अथवा बिना दण्ड दिये एक बार मामला अन्तिम रूप से समाप्त हो गया है तो ठीक उसी अनियमितता या आरोप के आधार पर किसी सरकारी सेवक के विरूद्ध पुन: दण्डात्मक कार्यवाही नहीं की जा सकती है।

(18) फौजदारी (क्रिमिनल) मामले में यदि किसी सरकारी सेवक को क्रिमिनल चार्ज के कारण न्यायालय द्वारा दिये गये दण्ड के आधार पर सेवा से पदच्युत या हटाया जाता है तो उस कार्यवाही को करने से पूर्व "भारत का संविधान" के अनुच्छेद-311(2) के अनुसार किसी जॉच की आवश्यकता नहीं है। यदि किसी सरकारी सेवक को अधीनस्थ न्यायालय द्वारा किसी आपराधिक आरोप (क्रिमिनल चार्ज) के आधार पर दण्डित कर दिया जाता है तथा सम्बन्धित कर्मचारी ने अधीनस्थ न्यायालय के निर्णय के विरूद्ध उच्च न्यायालय या अन्य किसी सक्षम न्यायालय में अपील दायर कर दी है तो अपील के फैसले की प्रतीक्षा किये बिना या अपील दायर न होने की दशा में अपील दायर किये जाने की अवधि समाप्त होने की प्रतीक्षा किये बिना संबंधित सरकारी सेवक को सेवा से पदच्युत (डिसमिस) अथवा हटाया (रिमूव) जा सकता है। यदि अपील में सरकारी सेवक दोषमुक्त हो जाता है तो अपील के निर्णय के पहले उसके विरूद्ध सेवा से पदच्युत अथवा हटाये जाने की जो कार्यवाही की गयी है वह अवैध होगी।

(19) यदि विभागीय जॉच की कार्यवाही के लम्बित रहते हुए आरोपित सरकारी सेवक अपनी अधिवर्षता आयु प्राप्त कर सेवानिवृत्त हो जाता है तो लम्बित जॉच को सी0एस0आर0 के अनुच्छेद-351ए के तहत पेंशन से कटौती के लिए जारी रखा जा सकता है, परन्तु सेवानिवृत्त सरकारी सेवक को कोई दण्ड नहीं दिया जा सकता है और न ही उक्त दण्ड के उददेश्य से कार्यवाही प्रारम्भ की/ जारी रखी जा सकती है।

(20) यदि सेवानिवृत्ति के पश्चात् कोई तथ्य सामने आये तो सेवानिवृत्ति के पश्चात् भी सी0एस0आर0 के अनुच्छेद-351ए के तहत कार्यवाही की जा सकती है, बशर्ते कि जिस घटना के सम्बंध में जॉच प्रारम्भ की जाय, जॉच प्रारम्भ करने की तिथि को उस घटना को चार वर्ष से अधिक समय न बीत चुका हो।

(21) सरकारी धन का गबन या दुर्विनियोजन आदि होने पर दोषी सरकारी सेवक के विरूद्ध विभागीय कार्यवाही में शासकीय धन की क्षति की सम्पूर्ण वसूली किये जाने हेतु प्रथम चरण में ही सक्षम प्राधिकारी द्वारा यह सुनिश्चित कर लिया जाय कि सम्पूर्ण धन की क्षति की वसूली सम्भव है अथवा नहीं। यदि यह सम्भव न हो तो तत्परता से सक्षम न्यायालय के माध्यम से उस सरकारी सेवक से सिविल लायबिलिटी के रूप में उक्त हानि की धनराशि वसूल करने हेतु कार्यवाही सुनिश्चित की जाय।

(22) जॉच अधिकारी द्वारा उत्तर प्रदेश सरकारी सेवक (अनुशासन एवं अपील) नियमावली, 1999 तथा उपरोक्तानुसार स्पष्ट की गयी स्थिति के अनुसार जॉच न किये जाने की दशा में इसे अपने शासकीय दायित्वों के प्रति उदासीनता मानते हुए प्रतिकूल तथ्य के रूप में देखा जायेगा।

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1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अत: इस पर हस्ताक्षर की आवश्यकता नहीं है ।

2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.nic.in से सत्यापित की जा सकती है ।

(23) अपचारी कार्मिक को दण्ड दिये जाने की स्थिति में नियुक्ति प्राधिकारी जॉच के संबंध में उपरोक्तानुसार वर्णित व्यवस्था का पालन किये जाने की स्थिति का संज्ञान लेगा तथा उसके द्वारा इस संबंध में पर्याप्त सतर्कता बरती जानी चाहिए।

उपरोक्त समय-सारणी सुविधा के लिए निर्धारित की गयी है। अत: प्रत्येक मामले में उक्त समय-सारणी का अनुपालन सुनिश्चित किया जाय। यदि किसी मामले में उपरोक्त समय-सारणी का पालन सम्भव नहीं है तो उन कारणों का उल्लेख सम्बन्धित प्राधिकारी द्वारा किया जाना चाहिए। यह स्पष्ट किया जाता है कि यदि किन्हीं कारणों से उपरोक्त समय-सारणी के अनुसार प्रकरण का निस्तारण नहीं हो पाता है तो इससे अपचारी कार्मिक किसी अनुतोष का हकदार नहीं होगा।

**5-** कृपया शासन द्वारा लिये गये उपरोक्त निर्णय का कड़ाई से अनुपालन सुनिश्चित करने/ कराने का कष्ट करें।

भवदीय,
आलोक रंजन
मुख्य सचिव ।

संख्या-1/ 2015/ 13/ 9/ 98(1)/ का-1-2015, तददिनांक

प्रतिलिपि, निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित :-

1. प्रमुख सचिव, न्याय एवं विधि परामर्शी, उत्तर प्रदेश शासन।
2. प्रमुख सचिव, राज्यपाल महोदय, उत्तर प्रदेश।
3. महाधिवक्ता, उत्तर प्रदेश।
4. प्रमुख सचिव, विधान सभा/ विधान परिषद, उत्तर प्रदेश।
5. सचिव, लोक सेवा आयोग, उत्तर प्रदेश, इलाहाबाद।
6. सचिव, उत्तर प्रदेश अधीनस्थ सेवा चयन आयोग, लखनऊ।
7. सचिव, राजस्व परिषद, उत्तर प्रदेश।
8. मीडिया सलाहकार, मा0 मुख्य मंत्री जी।
9. निदेशक, सूचना विभाग, उत्तर प्रदेश।
10. वेब मास्टर/ वेब अधिकारी, नियुक्ति विभाग, उ0प्र0 शासन को नियुक्ति एवं कार्मिक विभाग की वेबसाइट पर अपलोड कराने के प्रयोजनार्थ ।
11. सचिवालय के समस्त अनुभाग।

आज्ञा से,
राजीव कुमार
प्रमुख सचिव ।

1- यह शासनादेश इलेक्ट्रानिकली जारी किया गया है, अत: इस पर हस्ताक्षर की आवश्यकता नहीं है ।
2- इस शासनादेश की प्रमाणिकता वेब साइट http://shasanadesh.up.nic.in से सत्यापित की जा सकती है ।

# U.P. GOVERNMENT SERVANT'S CONDUCT RULES, 1956

# उत्तर प्रदेश सरकारी कर्मचारी आचरण-नियमावली, 1956

**(राजाज्ञा स0 – 957 / कार्मिक– 1/1998 लखनऊ : दिनाँक 17 अक्टूबर, 1998 द्वारा संशोधित)**

नियुक्त (B) विभाग

**विविध**

संख्या– 2367/118–BII–54 दिनाँक : 21 जुलाई, 1956

भारत के संविधान के अनुच्छेद 309 के प्रतिबन्धात्मक खण्ड द्वारा प्रदत्त अधिकारों का प्रयोग करके, उत्तर प्रदेश के राज्यपाल, उत्तर प्रदेश के कार्यो से सम्बद्ध सेवा में लगे सरकारी कर्मचारियों के आचरण को विनियमन करने वाले निम्नलिखित नियन बनाते हैं:

## उ० प्र० सरकारी कर्मचारी आचरण नियमावली, 1956 (यथा संशोधित)

**1–संक्षिप्त नाम**–ये नियम "उत्तर प्रदेश सरकारी कर्मचारी आचरण नियमावली 1956" कहलायेगी।

**2–परिभाषायें**–जब तक प्रसंग से कोई अन्य अर्थ न हो, इन नियमों में–

(क) "सरकार" से तात्पर्य उत्तर प्रदेश सरकार से है,

(ख) "सरकारी कर्मचारी" से तात्पर्य उस व्यक्ति से है, जो उत्तर प्रदेश के कार्यो से सम्बद्ध लोक सेवाओं और पदों पर नियुक्त हो।

**स्पष्टीकरण**–इस बात के होते हुये भी कि उस सरकारी कर्मचारी को वेतन उत्तर प्रदेश की संचित निधि के अतिरिक्त साधनों से लिया जाता है, ऐसा सरकारी कर्मचारी भी, जिसकी सेवायें उत्तर प्रदेश सरकार ने किसी कम्पनी, निगम, संगठन, स्थानीय प्राधिकारी, इन नियमों के प्रयोजनों के लिये सरकारी कर्मचारी समझा जायेगा।

[1](ग) किसी सरकारी कर्मचारी के सम्बन्ध में, "परिवार का सदस्य" के अन्तर्गत निम्नलिखित व्यक्ति सम्मिलित होंगे :–

(i) ऐसे सरकारी कर्मचारी की पत्नी उसका पुत्र, सौतेला पुत्र, अविवाहित पुत्री या अविवाहित सौतेली पुत्री चाहे वह उसके साथ रहती/रहता हो अथवा नहीं, और किसी महिला सरकारी कर्मचारी के सम्बन्ध में, उसके साथ रहने या न रहने वाला तथा उस पर आश्रित उसका पति, पुत्र, सौतेला पुत्र, अविवाहिता पुत्रियाँ या अविवाहित सौतेली पुत्रियाँ, तथा :

(ii) कोई भी अन्य व्यक्ति, जो उक्त सम्बन्ध से या विवाह द्वारा, उक्त सरकारी कर्मचारी का सम्बन्धी हो या ऐसे सरकारी कर्मचारी की पत्नी का या उसके पति का सम्बन्धी हो, और जो ऐसे कर्मचारी पर पूर्णतः आश्रित हो,

किन्तु इसके अन्तर्गत ऐसी पत्नी या पति सम्मिलित नहीं होगी/सम्मिलित नहीं होगा, जो सरकारी कर्मचारी से विधितः पृथक् की गई हो/पृथक् किया गया हो या ऐसा पुत्र, सौतेला किसी भी प्रकार उस पर आश्रित नहीं है या जिसकी अभिरक्षा से सरकारी कर्मचारी को, विधि द्वारा, वंचित कर दिया गया हो।

**3. सामान्य**–(1) प्रत्येक सरकारी कर्मचारी, सभी समयों में, परम सत्यनिष्ठा तथा कर्तव्य परायणता से कार्य करता रहेगा।

(2) प्रत्येक सरकारी कर्मचारी, सभी समयों पर, व्यवहार तथा आचरण को विनियमित करने वाले प्रवृत्त विशिष्ट या ध्वनित शासकीय आदेशों के अनुसार आचरण करेगा।

1-001.jpg

[1]3—कामकाजी महिलाओं के यौन उत्पीड़न की प्रतिषेध—

(1) कोई सरकारी कर्मचारी किसी महिला के कार्य स्थल पर, उसके यौन उत्पीड़न के किसी कार्य में संलिप्त नहीं होगा।

(2) प्रत्येक सरकारी कर्मचारी जो किसी कार्य स्थल का प्रभारी हो, उस कार्य स्थल पर किसी महिला के यौन उत्पीड़न को रोकने के लिए उपयुक्त कदम उठाएगा।

**स्पष्टीकरण**—इस नियम के प्रयोजनों के लिए 'यौन उत्पीड़न' में प्रत्यक्षः या अन्यथा कामवासना से प्रेरित कोई ऐसा अशोभनीय व्यवहार सम्मिलित है जैसे कि—

(क) शारीरिक स्पष्टी ओर कामोदीप्त सम्बन्धी चेष्टाएँ,

(ख) यौन स्वीकृति की मांग या प्रार्थना,

(ग) कामवासना—प्रेरित फब्तियाँ,

(घ) किसी कामोत्तेजक कार्य व्यवहार या सामग्री का प्रदर्शन, या

(ङ) यौन सम्बन्धी कोई अन्य अशोभनीय शारीरिक, मौखिक या सांकेतिक आचरण।

**4. सभी लोगो के समान व्यवहार**—प्रत्येक सरकारी कर्मचारी, सभी लोगो के साथ, चाहे वे किसी भी जाति, पंथ या धर्म के क्यों न हों, समान व्यवहार करेगा।

[2](2) कोई भी सरकारी कर्मचारी किसी भी रूप में अस्पृश्यता का आचरण नहीं करेगा।

[3]**4—क. मादक पान तथा औषधि का सेवन**—कोई भी सरकारी कर्मचारी—

(क) किसी क्षेत्र में, जहाँ वह तत्समय विद्यमान हो, मादकपान अथवा औषधि सम्बन्धी प्रवृत्त किसी विधि का दृढ़ता से पालन करेगा।

(ख) अपने कर्तव्य पालन के दौरान किसी मादकपान या औषधि के प्रभावधीन नहीं होगा और इस बात का सम्यक् ध्यान रखेगा कि किसी भी समय उसके कर्तव्यों का पालन किसी भी प्रकार ऐसे पेय या भेषज के प्रभाव से प्रभावित नहीं होता है।

(ग) सार्वजनिक स्थान में किसी मादकपान अथवा औषधि के सेवन से अपने को विरत रखेगा,

(घ) मादक पान करके किसी सार्वजनिक स्थान में उपस्थित नहीं होगा,

(ङ) किसी भी मादकपान या औषधि का प्रयोग अत्याधिक मात्रा में नहीं करेगा।

**स्पष्टीकरणः** (i)—इस नियम के प्रयोजनार्थ 'सार्वजनिक स्थान का तात्पर्य किसी ऐसे स्थान या भूगृहादि जिसके अन्तर्गत कोई सवारी भी है, जहाँ भुगतान करके या अन्य प्रकार से जनता जा सकती हो या उसे आने जाने—की अनुज्ञा हो।

**स्पष्टीकरण** (ii)—कोई गोष्ठी (क्लब)—

(क) जो सरकारी कर्मचारियों से भिन्न व्यक्तियों की सदस्यों के रूप में प्रवेश देती है, अथवा,

(ख) जिसके सदस्य गैर सदस्यों को उसके अतिथि के रूप में आमन्त्रित करते हैं यद्यपि सदस्यता सरकारी सेवकों तक ही सीमित क्यों न हो,

यह भी स्पष्टीकरण के प्रयोजनों के लिए ऐसा स्थान माना जायेगा जिसके लिये जनता की पहुँच हो अथवा पहुँच के लिये अनुज्ञप्त हो।

**5. राजनीति तथा चुनाव में हिस्सा लेना**—(i) कोई भी सरकारी कर्मचारी किसी राजनीतिक दल का या किसी संस्था का, जो राजनीति में हिस्सा लेती है, सदस्य न होगा और न अन्यथा उससे सम्बन्ध रखेगा और न वह किसी ऐसे अन्दोलन में या संस्था में हिस्सा लेगा, उसके सहायतार्थ चन्दा

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देगा या किसी अन्य रीति से उसकी मदद करेगा,जो प्रत्यक्षतः या अप्रत्यक्षतः विधि द्वारा स्थापति प्रति सरकार के उच्छेदक है या उसके प्रति उच्छेदक कार्यवाहियॉं करने की प्रवृत्ति पैदा करती हैं।

**उदाहरण**

राज्य में "क", "ख", "ग" राजीतिक दल है।

"क" वह दल है जिसके हाथ में सत्ता है और जिसने उस समय की सरकार बनाई है।

"अ" एक सरकारी कर्मचारी है।

इस उपनियम को निषेधाज्ञा 'अ' पर सभी दलों के सम्बन्ध में लागू होंगे, जिसमें "क" दल भी है जिसके हाथ में सत्ता है, सम्मिलित होगा।

(2) प्रत्येक सरकारी कर्मचारी का यह कर्तव्य होगा कि वह अपने परिवार के किसी सदस्य को ऐसी अन्दोलन या क्रिया में जो प्रत्यक्षतः या अप्रत्यक्षतः विधि द्वारा स्थापित सरकार के प्रति उच्छेदक है या उसके प्रति उच्छेदक कार्यवाहियॉं करने की प्रवृत्ति पैदा करती है, हिस्सा लेने, सहायतार्थ चन्दा देने या किसी अन्य रीति से उसकी मदद करने से रोकने का प्रयत्न करे, और उस दशा में जबकि कोई सरकारी कर्मचारी अपने परिवार से किसी सदस्य को किसी ऐसे अन्दोलन या क्रिया में हिस्सा लेने, सहायतार्थ चन्दा देने या किसी अन्य रीति से मदद करने से रोकने में असफल रहे, तो यह इस आशय की एक रिपोर्ट सरकार के पास भेज देगा।

**उदाहरण**

"क"एक सरकारी कर्मचारी है।

"ख" एक परिवार का सदस्य है, जैसे उसकी परिभाषा नियम 2 (ग) में दी गयी है।

"म" वह आन्दोलन या क्रिया है, जो प्रयक्षतः या अप्रत्यक्षतः विधि द्वारा स्थापित सरकार के प्रति उच्छेदक है या उसके प्रति उच्छेदक कार्यवाहियॉं करने की प्रवृत्ति पैदा करती है।

"क" को विदित हो जाता है कि इस उपनियम के उपबन्धों के अन्तर्गत, "म" के साथ "ख" का सम्पर्क आपत्तिजनक है। "क" को चाहिये कि वह "ख" के ऐसे आपत्तिजनक सम्पर्क को रोके। यदि "क" "ख" के ऐसे सम्पर्क को रोकने में असफल रहे, तो उसे इस मामले की एक रिपोर्ट सरकार के पास भेज देना चाहिये।

[1](3) [x x x]

"If any question arises whether any movement or activity falls with in the scope of this rule, the decision of the Government thereon shall be final."

(4) कोई सरकारी कर्मचारी, किसी विधान मण्डल या स्थानीय प्राधिकारी के चुनाव में, न तो मतार्थन करेगा, न अन्यथा उसमें हस्तक्षेप करेगा, और न उसके सम्बन्ध में अपने प्रभाव का प्रयोग करेगा और न उसमें हिस्सा लेगा,

किन्तु प्रतिबन्ध यह है कि–

(i) कोई सरकारी कर्मचारी, जो ऐसे चुनाव में वोट डालने का अधिकारी है, वोट डालने के अपने अधिकार को प्रयोग में ला सकता है, किन्तु उस दशा में जब कि वह वोट डालने के अधिकार अधिकार का प्रयोग करता है वह इस बात का कोई संकेत न देगा कि उसने किस ढंग से अपना वोट डालने का विचार किया है अथवा किसी ढंग से उसने अपना वोट डाला है।

(ii) केवल इस कारण से तत्समय प्रवृत्त किसी विधि द्वारा या सके अन्तर्गत उस पर आरोपित किसी कर्तव्य के यथोचित पालन में, कोई सरकारी कर्मचारी किसी चुनाव के संचालन में मदद करता है, उसके सम्बन्ध में यह नहीं समझा जायेगा कि उसने इस उप–नियम के उपबन्धों का उल्लंघन किया है।

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**स्पष्टीकरण**—किसी सरकारी कर्मचारी द्वारा अपने शरीर, अपनी सवारी गाड़ी या निवास स्थान पर, किसी चुनाव चिन्ह के प्रदर्शन के सम्बन्ध में यह समझा जायेगा कि उसने इस उपनियम के अर्थ के अन्तर्गत है, किसी चुनाव के सम्बन्ध में अपने प्रभाव का प्रयोग किया गया।

**उदाहरण**

निर्वाचन के सम्बन्ध में निर्वाचन अधिकारी सहायक निर्वाचन अधिकारी, पीठासीन अधिकारी, पोलिंग अधिकारी या पोलिंग लिपिक के रूप में कार्य करना उप–नियम (4) के प्राविधानों का उल्लंघन नहीं करता।

[1]**5-क प्रदर्शन तथा हड़तालें**—कोई सरकारी कर्मचारी—

(1) कोई ऐसा प्रदर्शन नहीं करेगा या किसी ऐसे प्रदर्शन में भाग नहीं लेगा जो भारत की प्रभुता (सावरिनिटी) तथा अखण्डता (इण्टैग्रिटी) के हितों, राज्य की सुरक्षा, विदेशी राज्यों के साथ मैत्रीपूर्ण सम्बन्धी, सार्वजानिक सुव्यवस्था, भद्रता या नैतिकता के प्रतिकूल हो अथवा जिससे न्यायालय की अवमानना,मानहानि होती हो या अपराध करने के लिए उत्तेजना मिलती हो अथवा

(2) अपनी सेवा किसी अन्य सरकारी कर्मचारी की सेवा से सम्बन्धित किसी मामले के सम्बन्ध में न तो कोई हड़ताल करेगा और न किसी प्रकार की हड़ताल करने के लिए अवप्रेरित करेगा।

**5.ख. सरकारी कर्मचारियों द्वारा संघों का सदस्य बनना**—कोई सरकारी कर्मचारी किसी संघ का न तो सदस्य बनेगा और न उसका सदस्य बना रहेगा, जिसके उद्देश्य या क्रियायें भारत की प्रभुसत्ता अखण्डता या सार्वजनिक सुव्यवस्था या नैतिकता के हितों के विपरीत हो।

**6—समाचार पत्रों या रेडियो से सम्बन्ध**—(1) कोई सरकारी, कर्मचारी सिवाय उस दशा के जबकि उसने सरकार की पूर्व स्वीकृति प्राप्त कर ली हो, किसी समाचार–पत्र या नियत–कालिक प्रकाशन का पूर्णतः या अंशतः स्वामी नहीं बनेगा, न उसका संचालन करेगा और न उसके संपादन–कार्य प्रबन्ध में भाग लेगा।

(2) कोई सरकारी कर्मचारी, सिवाय उस दशा के,जबकि उसने सरकार की या इस सम्बन्ध में सरकार द्वारा अधिकृत किसी अन्य प्राधिकारी की पूर्व स्वीकृति प्राप्त कर ली हो अथवा जब वह अपने कर्तव्य का सद्भाव से निर्वहन कर रहा हो, किसी रेडियो प्रसारण में भाग नहीं लेगा या किसी समाचार–पत्र या पत्रिका को लेख नही भेजेगा और गुमनाम से अपने नाम में या किसी अन्य व्यकित के नाम में, किसी समाचार पत्र या पत्रिका को कोई पत्र नहीं लिखेगा।

परन्तु उस दशा में, जबकि ऐसे प्रसारण या लेख का स्वरूप केवल साहित्यिक, कलात्मक या वैज्ञानिक हो, किसी ऐसे स्वीकृति–पत्र के प्राप्त करने की आवश्यकता नहीं होगी।

**7–सरकार की आलोचना**—कोई सरकारी कर्मचारी किसी रेडियो प्रसारण में या गुमनाम से या स्वयं अपने नाम में या किसी अन्य–व्यक्ति के नाम में प्रकाशित किसी लेख में या समाचार–पत्रों को भेजे गये किसी पत्र में या किसी सार्वजनिक कथन में कोई ऐसी तथ्य की बात या मत नहीं व्यक्त करेगा:—

(i) जिससे प्रभाव यह हो कि वरिष्ठ पदाधिकारियों के किसी निर्णय की प्रतिकूल आलोचना हो या उत्तर प्रदेश सरकार या केन्द्रीय सरकार या किसी अन्य राज्य सरकार या किसी स्थानीय प्राधिकारी की किसी चालू या हाल की नीति या कार्य की प्रतिकूल आलोचना हो, या

(ii) जिससे उत्तर प्रदेश सरकार और केन्द्रीय सरकार या किसी अन्य राज्य की सरकार के आपसी सम्बन्धों में उलझन पैदा हो सकती हो, या

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(iii) जिससे केन्द्रीय सरकार और विदेशी राज्य की सरकार के आपसी सम्बन्धों में उलझन पैदा हो सकती हो।

किन्तु यह प्रतिबन्ध यह है कि इस नियम में दी हुई कोई भी बात किसी सरकारी कर्मचारी द्वारा व्यक्त किये गये किसी ऐसे कथन या विचारों के सम्बन्ध में लागू न होगी, जिन्हें अपने सरकारी पद की हैसियत से या उसें सौंपे गये कर्तव्यों के यथोचित पालन में व्यक्त किया हो।

**उदाहरण**

(1) "क" को जो एक सरकारी कर्मचारी है, सरकार द्वारा नौकरी से बरखास्त किया गया है। "ख" को, जो एक दूसरा सरकारी कर्मचारी को इस बात की अनुमति नहीं है कि वह सार्वजनिक रूप से यह कहे कि दिया गया दण्ड अवैध, अत्याधिक या अन्यायपूर्ण है।

(2) कोई सार्वजनिक अफसर स्टेशन "क" से स्टेशन "ख" को स्थानान्तरित किया गया है। कोई भी सरकारी कर्मचारी, उक्त सार्वजनिक अफसर की स्टेशन "क" पर ही बनाये रखने से सम्बन्धित किसी आन्दोलन में भाग नहीं ले सकता।

(3) किसी सरकारी कर्मचारी को इस बात की अनुमति नहीं है कि वह सार्वजनिक रूप से ऐसे मामलों में सरकार की नीति की आलोचना करे, जैसे किसी वर्ष के लिये निर्धारित गन्ने का भाव परिवहन का राष्ट्रीकरण, इत्यादि।

(4) कोई सरकारी कर्मचारी, निर्दिष्ट आयात की गई वस्तुओं पर केन्द्रीय सरकार द्वारा लगाये गये कर की दर के सम्बन्ध में कोई मत व्यक्त नहीं कर सकता।

(5) एक पड़ोसी राज्य, उत्तर प्रदेश की सीमा पर स्थित किसी भूखण्ड के सम्बन्ध में दावा करता है कि वह भूखण्ड उसका है। कोई सरकारी कर्मचारी उक्त दावे के सम्बन्ध में सार्वजनिक रूप से, कोई मत व्यक्त नहीं कर सकता।

(6) किसी सरकारी कर्मचारी को इस बात की अनुमति नहीं है कि वह किसी विदेशी राज्य के इस निश्चय पर कोई मत प्रकाशित करे कि उसने उन रियायतों को समाप्त कर दिया है जिन्हें वह एक दूसरे राज्य के राष्ट्रीयकों को देता था।

**8—किसी समिति या किसी अन्य प्राधिकारी के सामने साक्ष्य**—(1) उप—नियम (3) में उपबन्धित स्थिति के अतिरिक्त,कोई सरकारी कर्मचारी, सिवाय उस दशा के, जबकि उसने सरकार की पूर्व स्वीकृति प्राप्त कर ली हो, समिति या प्राधिकारी द्वारा संचालित किसी जाँच के सम्बन्ध में साक्ष्य नहीं देगा।

(2) उस दशा में, जब कि उप—नियम (1) के अन्तर्गत कोई स्वीकृति प्रदान की गई हो, कोई सरकारी कर्मचारी, इस प्रकार के साक्ष्य देते समय, उत्तर प्रदेश सरकार, या किसी अन्य राज्य सरकार की नीति की आलोचना नहीं करेगा।

(3) इस नियम में दी हुई कोई बात, निम्नलिखित के सम्बन्ध में लागू न होगी :—

(क) साक्ष्य जो सरकार, केन्द्रीय सरकार, उत्तर प्रदेश के विधान मण्डल या संसद द्वारा नियुक्त किसी प्राधिकारी के सामने दी गई हो, या

(ख) साक्ष्य, जो किसी न्यायिक जाँच में दी गयी हो।

**9—सूचना का अनधिकृत संचार**—कोई सरकारी कर्मचारी, सिवाय सरकार के किसी अथवा विशेष आदेशानुसार या उसको सौंपे गये कर्तव्यों का सद्भाव के साथ पालन करते हुये, प्रत्यक्षतः या अप्रत्यक्षतः, कोई सरकारी लेख या सूचना किसी सरकारी कर्मचारी को या किसी ऐसे अन्य व्यक्तियों को, जिसे ऐसा लेख या सूचना देने या संचार करने का उसे अधिकार न हो, न देगा और न संचार करेगा।

**स्पष्टीकरण**—किसी पत्रावली की टिप्पणियों को या, अपने पदीय वरिष्ठों को किये गये अभ्यावेदनों में, सरकारी कर्मचारी द्वारा सन्दर्भ इस नियम के अर्थो में सूचना का अनधिकृत संसूचना समझा जायेगा।

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**10—चन्दे**—कोई सरकारी कर्मचारी, सरकार की पूर्व स्वीकृति प्राप्त करके, किसी ऐसे धर्मार्थ प्रयोजन के लिये चन्दा या कोई अन्य वित्तीय सहायता माँग सकता है या स्वीकार कर सकता है या उसे इकट्ठा करने में भाग ले सकता है, जिसका सम्बन्ध डाक्टरी सहायता शिक्षा या सार्वजनिक उपयोगिता के अन्य उद्देश्यों से हो, किन्तु उसे इस बात की अनुमति नही है कि वह इनके अतिरिक्त किसी भी अन्य प्रयोजन के लिये चन्दा आदि माँगे।

[1]**11—भेंट**—कोई सरकारी कर्मचारी, सिवाय उस दशा के जबकि उसने सरकार की पूर्व स्वीकृति प्राप्त कर ली हो—

(क) स्वयं अपनी ओर से या किसी अन्य व्यक्ति की ओर से या किसी ऐसे व्यक्ति से जो उसका निकट सम्बन्धी न हो, प्रत्यक्षतः या अप्रत्यक्षतः कोई भेंट, अनुग्रह धन पुरस्कार स्वीकार नहीं होगा।

(ख) अपने परिवार के किसी ऐसे सदस्य को, उस पर आश्रित हो, किसी ऐसे व्यक्ति से जो उसका निकट सम्बन्धी न हो, कोई भेंट, अनुग्रह धन या पुरस्कार स्वीकार करने की अनुमति नहीं देगा—

किन्तु प्रतिबन्ध यह है कि वह किसी जातीय मित्र से, सरकारी कर्मचारी के मूल वेतन का दसांश या उससे कम मूल्य का एक विवाहोहार या किसी रीतिक अवसर पर इतने ही मूल्य का एक उपहार स्वीकार कर सकता है या अपने परिवार के किसी सदस्य को उसे स्वीकार करने की अनुमति दे सकता है। किन्तु सभी सरकारी कर्मचारियों को चाहिये कि वे इस प्रकार के उपहारों को दिये जाने को भी रोकने का भरसक प्रयत्न करें।

**उदाहरण**

एक कस्बे के नागरिक यह निश्चय करते हैं 'क' को, जो एक सब डिवीजन अफसर है, बाढ़ के दौरान उसके द्वारा की गयी सेवाओं के सराहना स्वरूप एक घड़ी भेंट में दी जाय, जिसका मूल्य उसके मूल वेतन के दसांश से अधिक है। सरकार की पूर्व स्वीकृति प्राप्त किये बिना 'क' उक्त उपहार स्वीकार नहीं कर सकता है।

**11.क-कोई सरकारी कर्मचारी**—

(i) न तो दहेज देगा या प्राप्त करेगा या दहेज लेन देन को प्रेरित करेगा, अथवा

(ii) वधू या वर जैसी भी दशा हो के माता—पिता अथवा अभिभावक से प्रत्यक्षतः या परोक्षतः कोई दहेज की माँग नहीं करेगा।

**स्पष्टीकरण**—इस नियम के प्रयोजनों के लिये दहेज शब्द का अर्थ है जो दहेज निषेध अधिनियम 1961 में दिया गया हैं।

[2]**12—चिकित्सा अधिकारियों द्वारा भेंट इत्यादि का लिया जाना**—(निरस्त)

**13—रीतिका समारोहों में कर्णिकी इत्यादि का उपहार स्वरूप किया जाना**—(निरस्त)

**14—सरकारी कर्मचारियों के सम्मान में सार्वजनिक प्रदर्शन**—कोई सरकारी कर्मचारी, सिवाय उस दशा के जबकि उसने सरकार के पूर्व स्वीकृति प्राप्त कर ली हो, कोई मान—पत्र या विदाई—पत्र नहीं लेगा, न कोई प्रमाण—पत्र स्वीकार करेगा और न अपने सम्मान में या किसी अन्य सरकारी कर्मचारी के सम्मान में अयोजित किसी सभा या सार्वजनिक आमोद में उपस्थित होगा।

किन्तु प्रतिबन्ध यह है कि इस नियम में दी हुई कोई बात, किसी ऐसे विदाई समारोह के सम्बन्ध में लागू न होगी जो सारतः निजी तथा अरीतिका स्वरूप का हो और जो किसी सरकारी कर्मचारी के सम्मान में उसके अवकाश प्राप्त करने या बदली के अवसर पर आयोजित हो, या किसी ऐसे व्यक्ति के सम्मान में अयोजित हो जिसने हाल ही में सरकार की सेवा छोड़ी हो।

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उदाहरण

"क" जो एक डिप्टी कलेक्टर है, रिटायर होने वाला है। "ख" जो जिले में एक दूसरा डिप्टी कलेक्टर है, "क" के सम्मान में एक ऐसा भोज दे सकता है जिसमें चुने हुये व्यक्ति आमन्त्रित किये गये हों।

[1]**15. असरकारी व्यापार या नौकरी**—कोई सरकारी कर्मचारी, सिवाय उस दशा के जबकि उसने सरकार की पूर्व स्वीकृति प्राप्त कर ली हो, प्रत्यक्षतः या अप्रत्यक्षतः किसी व्यापार या कारोबार में नहीं जायेगा और न ही कोई नौकरी करेगा।

किन्तु प्रतिबन्ध यह है, कि कोई सरकारी कर्मचारी, इस प्रकार की स्वीकृति प्राप्त किये बिना कोई सामाजिक या धर्मार्थ प्रकार को अवैतनिक कार्य या कोई साहित्यिक, कलात्मक या वैज्ञानिक प्रकार का आकस्मिक कार्य कर सकता है, लेकिन शर्त यह है कि इस कार्य के द्वारा उसके सरकारी कर्तव्यों में कोई अड़चन नहीं पड़ता है तथा वह ऐसे कार्य हाथ में लेने से एक महीने के भीतर ही, अपने विभागाध्यक्ष और यदि वह स्वयं विभागाध्यक्ष हो, तो सरकार को इस बात की सूचना दे दे, किन्तु यदि सरकार उसे इस प्रकार का कोई आदेश दे तो वह ऐसा कार्य हाथ में नहीं लेगा, और यदि उसने हाथ में ले लिया है, तो बन्द कर देगा।

किन्तु अग्रतर प्रतिबन्ध यह है किन्तु सरकारी कर्मचारी के परिवार के किसी सदस्य द्वारा असरकारी व्यापार या असरकारी नौकरी हाथ में लेने की दशा में ऐसे व्यापार या नौकरी की सूचना सरकारी कर्मचारी द्वारा सरकार को दी जायेगी।

[2]**15-(क) चौदह वर्ष से कम आयु के बच्चों के रोजगार के सम्बन्ध में प्रतिबोध**—कोई सरकारी कर्मचारी चौदह वर्ष से कम आयु के किसी बच्चे को किसी परिसंकटमय कार्य में न तो नियोजित करेगा, न लगाएगा या ऐसे बच्चे से बेगार या इसी प्रकार का अन्य बलात्श्रम नहीं लेगा।

[3]**16. कम्पनियों का निबन्धन, प्रर्वतन तथा प्रबन्ध**—कोई सरकारी कर्मचारी सिवाय उस दशा के, जबकि उसने सरकार की पूर्व स्वीकृति प्राप्त कर ली हो, किसी ऐसे बैंक या अन्य कम्पनी के निबन्धन प्रवर्तन या प्रबन्ध में भाग लेगा, जो इण्डियन कम्पनीज ऐक्ट, 1956 के अधीन या तत्समय प्रवृत्त किसी अन्य विधि के अधीन निबद्ध हुआ है।

किन्तु प्रतिबन्ध यह है कि सरकारी कर्मचारी को को—आपरेटिव सोसाइटीज ऐक्ट, 1965 (यू0 पी0 ऐक्ट सं0 11, सन् 1966) के अधीन या तत्समय प्रवृत्त अन्य विधि के अधीन किसी सहकारी समिति या सोसाइटीज रजिस्ट्रेशन ऐक्ट, 1860 (ऐक्ट सं0 21, 1860) या किसी तत्स्थानीय प्रवृत्त विधि के अधीन निबद्ध किसी साहित्यक, वैज्ञानिक या धमार्थ समिति के निबन्धन, प्रवर्तन या प्रबन्ध में भाग ले सकता है।

अग्रतेर प्रतिबन्ध यह है कि यदि कोई सरकारी कर्मचारी किसी सहकारी समिति के प्रतिनिधि के रूप में किसी बड़ी सहकारी समिति या निकाय में उपस्थित हो तो वह उस बड़ी सहकारी समिति या निकाय के किसी पद के निर्वाचन की इच्छा न करेगा। वह ऐसे निर्वाचनों में केवल अपना मत देने के लिये भाग ले सकता है।

**17. बीमा कारोबार**—कोई सरकारी कर्मचारी, अपनी पत्नी को या अपने किसी अन्य सम्बन्धी को जो या तो उस पर पूणतः आश्रित हो या उसके साथ निवास करता हो उसी जिले में, जिसमें वह तैनात हो, बीमा अधिकर्ता के रूप मे कार्य करने की अनुमति नहीं देगा।

**18. अवयस्कों का संरक्षकत्व**—कोई सरकारी कर्मचारी, समुचित प्राधिकारी की पूर्व स्वीकृति प्राप्त किये बिना, उसी पर आश्रित किसी अवयस्क के अतिरिक्त, किसी अन्य अव्यस्क के शरीर या सम्पत्ति के विधिक संरक्षक के रूप में कार्य नहीं करेंगा।

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**स्पष्टीकरण—1** इस नियम के प्रयोजन के लिये, आश्रित से तात्पर्य किसी सरकारी कर्मचारी की पत्नी, बच्चों तथा सौतले बच्चों और बच्चों से है और इसके अन्तर्गत उसके जनक बहिने, भाई, भाई के बच्चे और बहिन के बच्चे भी सम्मिलित होंगे, यदि वे उसके साथ निवास करते हों और उस पर पूर्णतः आश्रित हों।

**स्पष्टीकरण**—2 इस नियम के प्रयोजन के लिये, समुचित प्राधिकारी वही होगा, जैसा कि नीचे दिया गया :—

विभागाध्यक्ष, या मण्डलायुक्त या कलेक्टर के लिये .....राज्य सरकार।
जिला जज के लिये .....उच्च न्यायालय का प्रशासकीय जज।
अन्य सरकारी कर्मचरियों के लिये .....सम्बन्धित विभागाध्यक्ष।

**19. किसी सम्बन्धी, रिश्तेदार के विषय में कार्यवाही**—(1) जब कोई सरकारी कर्मचारी, किसी ऐसे व्यक्ति विशेष के बारे में जो उसका सम्बन्धी हो, चाहे वह सम्बन्ध दूर का या निकट का हो, कोई प्रस्ताव या मत प्रस्तुत करता है या कोई अन्य कार्यवाही करता है, चाहे वह प्रस्ताव, मत कार्यवाही उक्त सम्बन्धी के पक्ष में हो अथवा उसके विरूद्ध हो, तो वह प्रत्येक ऐसे प्रस्ताव, मत या कार्यवाही के साथ, यह बात भी स्पष्ट रूप से बता देगा कि वह व्यक्ति विशेष उसका सम्बन्धी है, अथवा नहीं और यदि वह उसका ऐसा सम्बन्धी है, तो इस सम्बन्ध का स्वरूप क्या है ?

(2) जब किसी प्रवृत्त विधि, नियम या आदेश के अनुसार, कोई सरकारी कर्मचारी किसी प्रस्ताव, मत या किसी अन्य कार्यवाही के सम्बन्ध में अन्तिम रूप से निर्णय करने की शक्ति रखता है, और जब वह प्रस्ताव, मत या कार्यवाही, किसी ऐसे व्यक्ति विशेष के सम्बन्ध में है, जो उसका सम्बन्धी है चाहे वह सम्बन्ध दूर का या निकट का हो, और चाहे उस प्रस्ताव मत या कार्यवाही का उक्त व्यक्ति विशेष पर अनुकूलता प्रभाव पड़ता हो या अन्यथा, वह कोई निर्णय नहीं देगा, बल्कि वह उस मामले को अपने वरिष्ठ पदाधिकारियों को प्रस्तुत कर देगा। और साथ ही उसे प्रस्तुत करने के कारण तथा सम्बन्ध के स्वरूप को भी स्पष्ट कर देगा।

**20. सट्टा लगाना**—(1) कोई सरकारी कर्मचारी किसी लगी हुई पूँजी में सट्टा नहीं लगायेगा।

**स्पष्टीकरण**—बहुत ही अस्थिर मूल्य वाली प्रतिभूतियों की सतत खरीद या बिक्री के सम्बन्ध में यह समझा जायेगा कि वह इस नियम के अर्थ में लगी हूई पूँजियों में सट्टा लगाता है।

(2) यदि कोई प्रश्न उठता है कि कोई प्रतिभुति या लगी हुई पूँजी उप—नियम (1) में निर्दिष्ट स्वरूप की है अथवा नहीं, तो उस पर सरकार द्वारा निर्णय अन्तिम होगा।

**[1]21. विनियोग (लगाई हुई पूँजियाँ)**-(1) कोई सरकारी कर्मचारी, न तो कोई पूँजी इस प्रकार स्वयं लगायेगा और न अपनी पत्नी या अपने परिवार के किसी सदस्य को लगाने देगा; जिससे उसके सरकारी कर्तव्यों के परिपालन में उलझन या प्रभाव पड़ने की सम्भावना हो।

(2) यदि कोई प्रश्न उठता है कि कोई प्रतिभूत या लगी हुई पूँजी उपनियम (1) के स्वरूप की है अथवा नहीं तो उस पर सरकार द्वारा दिया गया निर्णय अन्तिम होगा।

**उदाहरण**—कोई जिला जज, उस जिले में जिसमें वह नियुक्त है, अपनी पत्नी या अपने पुत्र को, कोई सिनेमा—गृह खोलने, या उसमें कोई हिस्सा खरीदने की अनुमति नहीं देगा और यदि वह ऐसे जिले को स्थानान्तरित कर दिया जाता है जहाँ उसके परिवार के सदस्य पहिले ही ऐसा विनियोग कर चुका हैं तो, वह अपने वरिष्ठ प्राधिकारी को अविलम्ब सूचित करेगा।

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[1]**22. उधार देना और उधार लेना**—(1) कोई सरकारी कर्मचारी, सिवाय उस दशा के, जबकि उसने समुचित प्राधिकारी की पूर्व स्वीकृति प्राप्त कर ली हो, किसी ऐसे व्यक्ति को, जिसके पास उसके प्राधिकार की स्थानीय सीमाओं के भीतर,कोई भूमि या बहुमूल्य सम्पत्ति हो, रुपया उधार नहीं लेगा और न किसी व्यक्ति को ब्याज पर रुपया उधार देगा।

किन्तु प्रतिबन्ध यह है कि कोई सरकारी कर्मचारी, किसी सरकारी नौकरी को, अग्रिम रूप में वेतन दे सकता है या, इस बात के होते हुये भी कि ऐसा व्यक्ति (उसका मित्र या सम्बन्धी) उसके प्राधिकार की स्थानीय सीमाओं के भीतर कोई भूमि रखता है वह अपने किसी जातीय मित्र या सम्बन्धी को, बिना ब्याज के, एक छोटी रकम वाला ऋण दे सकता है।

[2](2) कोई भी सरकारी कर्मचारी, सिवाय किसी बैंक, सहकारी समिति या अच्छी साख वाले फर्म के साथ साधारण व्यापार क्रम के अनुसार न तो किसी व्यक्ति से, अपने स्थानीय प्राधिकार की सीमाओं के भीतर, रुपया उधार लेगा, और न अन्यथा, अपने को ऐसी स्थिति में रखेगा जिससे वह उस व्यक्ति के वित्तीय आधार के अन्तर्गत हो जाय, और न वह सिवाय उस दशा के जबकि उसने समुचित प्राधिकारी की पूर्व स्वीकृति प्राप्त कर ली हो, अपने परिवार के किसी सदस्य को, इस प्रकार का व्यवहार करने की अनुमति देगा।

किन्तु प्रतिबन्ध यह है कि कोई सरकारी कर्मचारी किसी जातीय मित्र व सम्बन्धी से अपने दो माह के मूल वेतन या उससे कम मूल्य का बिना ब्याज वाला एक नितान्त अस्थायी ऋण स्वीकार कर सकता है या किसी वास्तविक व्यापारी के साथ उधार लेखा चला सकता है।

(3) जब कोई सरकारी कर्मचारी, इस प्रकार के किसी पद पर नियुक्त या स्थानान्तरण पर भेजा जाय, जिसमें उसके द्वारा उपनियम (1) या उप–नियम (2) के किन्हीं उपबन्धों का उल्लंघन निहित हो, तो वह तुरन्त ही समुचित प्राधिकारी को उक्त परिस्थितियों की रिपोर्ट भेज देगा, और उसके बाद ऐसे आदेशों के अनुसार कार्य करेगा जिन्हे समुचित प्राधिकारी दे।

(4) ऐसे सरकारी कर्मचारियों की दशा में, जो गजटेड अधिकारी है, समुचित प्राधिकारी सरकार होगी और दूसरे मामलों में कार्यालयाध्यक्ष समुचित प्राधिकारी होगा।

**23. दिवाला और अभ्यासी ऋणग्रस्ता**—कोई सरकारी, कर्मचारी अपने व्यक्तिगत मामलों का ऐसा प्रबन्ध करेगा जिससे वह अभ्यासी ऋणग्रस्तता से या दिवाला से बच सके। ऐसे सरकारी कर्मचारी की, जिसके विरूद्ध उसके दिवालिया होने के सम्बन्ध में कोई विधिक कार्यवाही चल रही हो, उसे चाहिये कि वह तुरन्त ही उस कार्यालय या विभाग के अध्यक्ष को, जिसमें वह नौकरी कर रहा हो, सब बातों की रिपोर्ट भेज दे।

**24. चल-अचल एवं बहुमूल्य सम्पत्ति**—(1) कोई सरकारी कर्मचारी, सिवाय उस दशा के, जबकि समुचित प्राधिकारी को इसकी पूर्ण जानकारी हो, या तो स्वयं अपने नाम से या अपने परिवार के किसी सदस्य के नाम से पट्टा, रेहन, क्रय, विक्रय या भेंट द्वारा या अन्यथा, न तो कोई अचल सम्पत्ति अर्जित करेगा और न उसे बेचेगा।

किन्तु प्रतिबन्ध यह है कि ऐसे व्यवहार के लिये, जो किसी नियमित और ख्याति प्राप्त व्यापारी से भिन्न व्यक्ति द्वारा संपादित किया गया हो, समुचित प्राधिकारी की पूर्व स्वीकृति प्राप्त करना आवश्यक होगा।

**उदाहरण**—"क" जो एक सरकारी कर्मचारी है, एक मकान खरीदने का प्रस्ताव करता है। उसे समुचित प्राधिकारी को इस प्रस्ताव की सूचना दे देनी चाहिये। यदि वह व्यवहार, किसी नियमित और

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ख्याति प्राप्त व्यापारी से भिन्न द्वारा संपादित किया जाना है, तो "क" को चाहिये कि वह समुचित प्राधिकारी की पूर्व स्वीकृति भी प्राप्त कर ले। यही प्रक्रिया उस दशा में भी लागू होगी जब "क" अपना मकान बेचने का प्रस्ताव करे।

'(2) कोई सरकारी कर्मचारी जो अपने एक माह के मूल वेतन से अधिक मूल्य की किसी चल सम्पत्ति में कोई और व्यवहार करता है, चाहे वह क्रय, विक्रय के रूप में सम्पादित हो या अन्यथा, तो उसे तुरन्त ही ऐसे व्यवहार की रिपोर्ट समुचित प्राधिकारी के पास भेज देना चाहिये।

किन्तु प्रतिबन्ध यह है कि कोई सरकारी कर्मचारी, सिवाय किसी ख्याति प्राप्त व्यापारी या अच्छी साख के अभिकर्ता (Agent) के साथ या द्वारा या समुचित प्राधिकारी की पूर्व स्वीकृति के साथ, इस प्रकार का कोई व्यवहार नहीं करेगा।

**उदाहरण**

(i) एक सरकारी कर्मचारी जिसका मासिक वेतन छः सौ रुपये है, सात सौ रुपये का टेप रिकार्डर खरीदता है, या

(ii) "ख" सरकारी कर्मचारी जिसका मासिक वेतन दो हजार रुपया मासिक है कार, एक हजार पाँच सौ रुपये में बेचता है।

प्रत्येक दशा में "क" या "ख" को मामला समुचित प्राधिकारी को सूचित करना चाहिये। यदि व्यवहार किसी ख्याति व्यापारी से भिन्न व्यक्ति से सम्पादित किया जाता है तो उनको चाहिये कि समूचित प्राधिकारी को पूर्व स्वीकृति भी प्राप्त कर लें।

(3) प्रथम नियुक्ति के समय और तदुपरान्त हर पाँच वर्ष की अवधि बीतने पर, प्रत्येक सरकारी कर्मचारी, सामान्य मार्ग के माध्यम से नियुक्त करने वाले प्राधिकारी को, ऐसी सभी अचल सम्पत्ति की घोषणा करेगा जिसका वह स्वयं स्वामी हो, जिसे उसने खुद अर्जित किया हो या जिसे उसने दान के रूप में पाया हो या जिसे वह पट्टा या रेहन पर रखे हो, ऐसे हिस्सों को या अन्य लगी हुई पूँजियों की घोषणा करेगा, जिन्हे वह समय-समय पर रखे या अर्जित करे, या उसकी पत्नी या उसके साथ रहने वाले या किसी प्रकार भी उस पर आश्रित उसके परिवार के किसी सदस्य द्वारा रखी गई हो। इस घोषणाओं में सम्पत्ति, हिस्सों और अन्य लगी हुई पूँजियों के पूरे ब्यौरे दिये जाने चाहिये।

(4) समुचित प्राधिकारी, सामान्य या विशेष आदेश द्वारा किसी भी समय, किसी सरकारी कर्मचारी, को यह आदेश दे सकता है कि वह आदेश में निर्दिष्ट अवधि के भीतर, ऐसी चल या अचल सम्पत्ति का, जो उसके पास अथवा उसके परिवार के किसी सदस्य के पास रही हो या अर्जित की गई हो, और जो आदेश में निर्दिष्ट हो, एक सम्पूर्ण विवरण--पत्र प्रस्तुत करे। यदि समुचित प्राधिकारी ऐसा आदेश दे तो ऐसे विवरण-पत्र में, उन साधनों के या उस प्रसाधन के ब्योरे भी सम्मिलित हों, जिनके द्वारा ऐसी सम्पत्ति अर्जित की गई थी।

(5) (अ) उप-नियमों (1) समुचित प्राधिकारी और (4) तक के सन्दर्भ में, किसी ऐसे सरकारी कर्मचारी की दशा में, जो किसी राज्य सेवा में हो, सरकार होगी, और उपनियम (2) के मामलों में, विभागाध्यक्ष होगा।

(ब) अन्य सरकारी कर्मचारियों की दशा में उपनियमों (1) से (4) तक के प्रयोजनों हेतु विभागाध्यक्ष होगा।

**25-सरकारी कर्मचारियों के कार्यों तथा चरित्र का प्रतिसमर्थन**-कोई सरकारी कर्मचारी सिवाय उस दशा के जब उसने सरकार की पूर्व स्वीकृति प्राप्त कर ली हो, किसी ऐसे सरकारी कार्य

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का, जो प्रतिकूल आलोचना या मानहानिकारी आक्षेप का विषय बन गया हो, (x) प्रतिसमर्थन करने के लिये न तो किसी न्यायालय की या समाचार–पत्रों की शरण लेगा।

**स्पष्टीकरण**–इस नियम की किसी बात के सम्बन्ध में यह नहीं समझा जायेगा कि किसी सरकारी कर्मचारी को, अपने वैयक्तिक चरित्र का या उसके द्वारा वैयक्तिक रूप में किये गये कार्य का प्रतिसमर्थन करने से प्रतिषेध किया जाता है।

[1]**26**–(x x x) निरस्त किया गया।

**27–असरकारी या अन्य बाह्य प्रभावा का मतार्थन**–कोई सरकारी कर्मचारी, अपनी सेवा से सम्बन्धित मामलों के विषय में अपने हितों की वृद्धि करने के उद्देश्य से; किसी ज्येष्ठ प्राधिकारी पर कोई राजनीतिक या अन्य बाह्य प्रभाव नहीं डालेगा और न डलवाने का प्रयास करेगा।

**स्पष्टीकरण**–सरकारी कर्मचारी की पत्नी या पति, जैसी भी दशा हो, या उसके परिवार का किसी सदस्य द्वारा किया गया कोई कार्य जो इस नियम की सीमा में आता हो जब तक कि इसके विपरीत प्रमाणित न कर दिया गया हो सम्बन्धित सरकारी कर्मचारी के अनुरोध या मौननुमित से किया गया समझा जायेगा।

**उदाहरण**

'क' सरकारी कर्मचारी है और 'ख' के परिवार का सदस्य है। 'ग' राजनैतिक, दल है और 'घ' एक संगठन 'छ' के अधीन है। 'ख' ने 'छ' में पर्याप्त ख्याति प्राप्त की और 'ख' का अधिकार हो गया। यद्यपि "घ", 'ख' ने 'क' के मामले को इस सीमा तक उत्तरदायी ठहराना प्रारम्भ कर दिया कि 'ख' ने 'क' को अधिकारिक उपरिष्ठों के विरूद्ध प्रस्तावों को घोषित किया। यह कार्य जो उक्त नियम के प्रावधानों का 'ख' के पक्ष का उल्लंधन होगा यह समझा जायगा कि वह 'ख' के द्वारा 'क' के अनुरोध या मौन स्वीकृति से किया गया है जब तक 'क' यह प्रमाणित करने में सफल हो कि यह ऐसा नही था।

[2]**27.(क) सरकारी सेवकों द्वारा अभ्यावेदन**–कोई सरकारी कर्मचारी सिवाय उचित माध्यम से और ऐसे निर्देशों के अनुसार जिन्हें सरकार समय–समय पर जारी करे, व्यक्तिगत रूप से अथवा अपने परिवार के किसी सदस्य के माध्यम से सरकार अथवा प्राधिकारी को कोई अभ्यावेदन नहीं करेगा। नियम 27 का स्पष्टीकरण इस नियम पर लागू होगा।

**28.अनधिकृति वित्तीय व्यवस्थायें**–कोई सरकारी कर्मचारी किसी अन्य सरकारी कर्मचारी के साथ या किसी अन्य व्यक्ति के साथ, कोई ऐसा वित्तीय व्यवस्था नहीं करेगा। जिसमें दोनों में से किसी एक को या दोनो ही को, अनधिकृत रूप में या तत्समय प्रवृत्त किसी नियम के विशिष्ट या ध्वनित उपबन्धों के विरूद्ध किसी प्रकार का लाभ हो।

**उदाहरण**

(1) "क" किसी कार्यालय में एक सीनियर क्लर्क है और स्थानपन्न रूप से पदोन्नति पाने का अधिकारी है। "क" को इस बात का भरोसा नहीं है कि वह उस स्थानपन्न पद के अपने कर्तव्यों का संतोषजनक रूप से निर्वहन कर सकता है। "ख" जो एक जूनियर क्लर्क है, कुछ वित्तीय प्रतिफल को दृष्टि में रखकर "क" को निजी तौर पर मदद देने को तैयार होता है। तद्नुसार "क" और "ख" वित्तीय व्यवस्था करते हैं। दोनों ही इस प्रकार नियम तोड़ते है।

(2) यदि "क" जो किसी कार्यालय का अधीक्षक है छुट्टी पर जाय, तो "ख" जो कार्यालय का सबसे सीनियर असिस्टेन्ट है, स्थानपन्न भत्ते में एक हिस्सा लेने की व्यवस्था करने के पश्चात् छुट्टी पर जाय तो "क" और "ख" ही नियम भंग करेंगे।

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**29. बहु विवाह**—(1) कोई सरकारी कर्मचारी, जिसकी एक पत्नी जीवित है, इस बात के होते हुये भी कि तत्समय उस पर लागू किसी वैयक्तिक विधि के अधीन उसे इस प्रकार की बाद की दूसरी शादी करने की अनुमति प्राप्त है, बिना पहिले सरकार की अनुमति प्राप्त किये, दूसरा विवाह नहीं करेगा।

(2) कोई महिला सरकारी कर्मचारी, बिना पहिले सरकार की अनुमति प्राप्त किये, ऐसे व्यक्ति से, जिसकी एक पति जीवित हो, विवाह नहीं करेगी।

**30.सुख सुविधाओं का समुचित प्रयोग**—कोई सरकारी कर्मचारी ऐसी सुख सुविधाओं का कुप्रयोग नहीं करेगा और न उनका असावधानी के साथ प्रयोग करेगा, जिनकी व्यवस्था सरकार ने उसके सरकारी कर्तव्यों के पालन में उसे सुविधा पहुँचाने के प्रयोजन से की हो।

**उदाहरण**

सरकारी कर्मचारियों के निमित्त जिन सुख–सुविधाओं की व्यवस्था की जाती है, उनमें मोटर, टेलीफोन, निवास स्थान, फर्नीचर,अर्दली, लेखन सामग्री आदि की व्यवस्था सम्मिलित है। इन वस्तुओं के कुप्रयोग के या उनके असावधानी के साथ प्रयोग किये जाने के उदाहरण ये है।

(1) सरकारी कर्मचारी के परिवार के सदस्यों या उसके अतिथियों, द्वारा सरकार व्यय, पर सरकारी मोटरों का प्रयोग करना या अन्य सरकारी कार्य के लिये उनका प्रयोग करना,

(2) ऐसे मामलों के बारे में, जिनका सम्बन्ध सरकारी कार्य से नहीं है, सरकारी व्यय पर, टेलीफोन ट्रन्काल करना,

(3) सरकारी निवास–स्थानों और फर्नीचर के प्रति असावधानी बरतना तथा उन्हे ठीक दशा में बनाये नहीं रखना और

(4) असरकारी कार्य के लिये सरकारी लेखन–सामग्री का प्रयोग करना।

**31. खरीदारियों के भुगतान देना**—कोई सरकारी कर्मचारी, उस समय तक जब तक किस्तों में मूल्य देना प्रथानुसार या विशेष रूप से उपबन्धित न हो या जब तक वास्तविक व्यापारी के पास उसका उधार लेखा न खुला हुआ हो, उस वस्तुओं का, जिन्हे उसने खरीदा हो, चाहे, ये खरीदारियाँ उसने दौरे पर या अन्यथा की हों, शीघ्र और पूर्ण मूल्य देना रोके नहीं रखेगा।

**32. बिना मूल्य दिये सेवाओं का उपयोग करना**—कोई सरकारी कर्मचारी बिना यथोचित और पर्याप्त मूल्य दिये, किसी ऐसे सेवा या अमोद का स्वयं प्रयोग न करेगा, जिसके लिये कोई किराया या मूल्य प्रवेश–शुल्क लिया जाता हो।

**उदाहरण**

जब तक ऐसा करना कर्तव्य के एक अंश के तौर पर निर्दिष्ट रूप से निर्धारित न किया गया हो, कोई सरकारी कर्मचारी :–

(1) किसी किराये पर चलने वाली गाड़ी में बिना मूल्य दिये यात्रा नहीं करेगा,

(2) बिना प्रवेश शुल्क दिये सिनेमा भी नहीं देखेगा।

**33. दूसरी की सवारी गाड़ियाँ प्रयोग में लाना**—कोई सरकारी कर्मचारी, सिवाय बहुत ही विशेष परिस्थितियों के होने की दशा में, किसी ऐसी सवारी गाड़ी को प्रयोग में नहीं लायेगा जो किसी असरकारी व्यक्ति की हो या किसी ऐसी सरकारी कर्मचारी की हो, जो उसके अधीन हो।

[1]**34.अधीनस्थ कर्मचारियों के जरिये खरीदारियाँ**—कोई सरकारी कर्मचारी, किसी ऐसी सरकारी कर्मचारी से, जो उसके अधीन हो, अपनी ओर से अपनी पत्नी या अपने परिवार के सदस्य की ओर से, चाहे.अग्रिम भुगतान करने पर या अन्यथा उसी शहर में या किसी दूसरे शहर मे, खरीददारियों

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करने के लिए न तो स्वयं करेगा और न अपनी पत्नी को या अपने परिवार के किसी अन्य सदस्य को, जो उसके साथ रह रहा हो, करने की अनुमति देगा,

**उदाहरण**

"क" एक प्रवर अधिकारी है "ख" उसके अधीन अधीनस्थ अधिकारी है।

"क" को चाहिये कि अपनी पत्नी को इस बात की अनुमति न दे कि वह "ख" से कहे कि उसके लिये कपड़ा खरीदवा दे।

**35. निर्वचन**– यदि नियमों के निर्वचन से सम्बन्धित कोई प्रश्न उठ खड़ा हो, तो उसे सरकार के पास भेज देना चाहिये और उस पर सरकार को जो भी निर्णय हो वह अन्तिम होगा।

**36. निरसन तथा अपवाद**– उन नियमों के प्रारम्भ होने से ठीक पूर्व प्रवृत्त कोई भी नियम, जो इन नियमों के तत्स्थानी थे और जो उत्तर प्रदेश की सरकार के नियन्त्रण के अधीन सरकारी कर्मचारी पर लागू होते थे, एतद्द्वारा निरस्त किये जाते है।

किन्तु प्रतिबन्ध यह है कि इस प्रकार निरस्त किये गये नियमों के अधीन जारी हुए किसी आदेश या की गई कार्यवाही के सम्बन्ध में यह समझा जायेगा कि वह आदेश या कार्यवाही इन नियमों के तत्स्थानी उपबन्धों के अधीन जारी किया गया था या की गई थी।

भवदीय
**ए0 एन0 झा**
मुख्य सचिव

□□□

**प्रोफार्मा–I**

शासनादेश सं0 सा–4–478/दस 506–72, दिनांक लखनऊ 1 अप्रैल 1975

**(भविष्य निर्वाह निधियों से अस्थाई अग्रिम लेने के लिये प्रार्थना-पत्र**

1– अभिदाता का नाम.....
2– खाता संख्या.....
3– पद का नाम.....
4– वेतन.....
5– प्रार्थना–पत्र देने की तिथि को अभिदाता के खाते से जमा धनराशि का विवरणः
(1) वर्ष.....की लेखा पर्ची (एकाउन्ट स्लिप) के अनुसार जमा धनराशि.....
(2) माह.....से.....तक अभिदान द्वारा जमा धनराशि.....
(3) अग्रिम की वापसी (रिफंड आफ एडवांस) द्वारा जमा.....
(4) निष्कासित धनराशि का विवरण.....
(क) अन्तिम निष्कासन.....
माह/वर्ष.....से.....माह वर्ष तक.....
(ख) अस्थाई अग्रिम.....
माह/वर्ष से .....माह वर्ष तक.....
(5) शुद्ध जमा धनराशि.....
6–पूर्ववर्ती, अग्रिम यदि शेष हो तो शेष धनराशि और उसके अग्रिम का प्रयोजन.....
7– अब माँगे जा रहे अग्रिम की धनराशि.....
8– (क) इस अग्रिम का प्रयोजन.....
(ख) जिसे नियमानुसार अनुमन्य है उसका सन्दर्भ.....

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9—समेकित अग्रिम की धनराशि (मद 6+7) तथा जितनी मासिक किश्तों में समेकित अग्रिम धनराशि की अदायगी की जानी है।

10— अभिदाता की अर्थिक स्थिति का पूरा विवरण जिससे प्रार्थना का औचित्य सिद्ध हो सके

आवेदक का हस्ताक्षर

नाम.....

पदनाम.....

अनुभाग/विभाग.....

□□□

## शिक्षा शुल्क की प्रतिपूर्ति हेतु प्रमाण-पत्र

**प्रपत्र (क)**

प्रमाण—पत्र

प्रमाणित किया जाता है कि श्री/कुमारी.....पुत्र/पुत्री.....को जो.....(कार्यालय का नाम) के कर्मचारी है.....स्कूल का नाम तथा स्थान की कक्षा .....कक्षाओं .....में भर्ती किया गया और वह उसमें/उनमें पढ़ रहा/रही है और उसकी जन्म दिनांक..... है।

2—प्रमाणित किया जाता है कि उक्त संस्था बोर्ड आफ हाईस्कूल एण्ड इण्टरमीडिएट एजुकेशन, उ0 प्र0 (शिक्षा विभाग)/शिक्षा प्राधिकारी द्वारा यथाविधि मान्य है।

3—प्रमाणित किया जाता है कि उक्त छात्र/छात्रों को सिवाय.....रु0 प्रतिमास की छात्रवृत्ति के और कोई सरकारी छात्रवृत्ति नहीं मिलती है।

4—प्रमाणित किया जाता है कि उक्त छात्र पूरा शिक्षण तथा विज्ञान शुल्क, आधा शिक्षण शुल्क तथा पुरा विज्ञान शुल्क देना है/देते है।

दिनांक.....

प्रधानाचार्य/संस्था का अध्यक्ष

स्कूल मोहर

□□□

**प्रोफार्मा—II**

## भविष्य निर्वाह निधियों से अस्थाई अग्रिम स्वीकार किये जाने का फार्म

एतद्द्वारा श्री/श्रीमती/कुमारी..... को उनके सा0 भवि0 नि0 /अंशदायी भवि0 नि0/सी0 पी0 एफ0 पी0 आई0 खाता संख्या.....से..... प्रयोजन के लिए खर्च की व्यवस्था करने हेतु.....रुपये (शब्दों में).....की अस्थाई अग्रिम की स्वीकृति नियम संख्या..... के अनुसार दी जाती है।

2— अग्रिम.....रुपये की.....मासिक किश्तों मे वसूल किया जायेगा जिसकी पहली किश्त.....(माह) के वेतन जो.....(माह) में देय होगा, से प्रारम्भ होगी।

3— राजाज्ञा.....दिनांक.....के अनुसार स्वीकृति तथा भुगतान की गई .....रुपये (शब्दों में)..... के रकम की वसूली अभी बाकी है। यह शेष धनराशि और अब स्वीकृति की गई अग्रिम की धनराशि जिसका कुल योग..... .....रुपये शब्दों में..... होता है कि

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उत्तर प्रदेश शासन
कार्मिक अनुभाग-1
76/ संख्या-13/ 5/ 98-का-1-2014
लखनऊ :: दिनांक 08 अगस्त, 2014

**अधिसूचना**

प्रकीर्ण

संविधान के अनुच्छेद, 309 के परन्तुक द्वारा प्रदत्त शक्ति का प्रयोग करके, राज्यपाल, "उत्तर प्रदेश सरकारी कर्मचारियों की आचरण नियमावली, 1956' में संशोधन करने की दृष्टि से निम्नलिखित नियमावली बनाते है :-

**उत्तर प्रदेश सरकारी कर्मचारियों की आचरण (संशोधन) नियमावली, 2014**

**संक्षिप्त नाम और प्रारम्भ** 1. (1) यह नियमावली उत्तर प्रदेश सरकारी कर्मचारियों की आचरण (संशोधन) नियमावली, 2014 कही जायेगी।

(2) यह तुरन्त प्रवृत्त होगी।

**नये नियम का बढ़ाया जाना** 2. उत्तर प्रदेश सरकारी कर्मचारियों की आचरण नियमावली, 1956 में विद्यमान नियम "3-क" के पश्चात् नया नियम "3-ख" बढ़ा दिया जाएगा, अर्थात :-

**शिकायत समिति की रिपोर्ट पर कार्रवाई**

"3-ख"-यदि किसी कर्मचारी के विरूद्ध यौन शोषण या यौन उत्पीड़न की शिकायत कार्य स्थल के प्रभारी सहित नियुक्ति प्राधिकारी को की जाती है और यदि नियुक्ति प्राधिकारी जांच के प्रयोजनार्थ एक शिकायत समिति (जिसमें एक महिला सदस्य का होना अनिवार्य होगा) गठित करता है तो ऐसी शिकायत समिति की रिपोर्ट/ निष्कर्ष को जांच रिपोर्ट माना जाएगा और नियुक्ति प्राधिकारी ऐसी रिपोर्ट के आधार पर अपचारी सरकारी सेवक पर लघु शास्ति आरोपित कर सकता है और एक पृथक जांच संस्थित करने की आवश्यकता नहीं होगी।

आज्ञा से,
ह0/ -

(राजीव कुमार)
प्रमुख सचिव।

IN pursuance of the provisions of clause (3) of Article 348 of the Constitution, the Governor is pleased to order the publication of the following English translation of notification no.13/5/1998-ka-1-2014, dated August 08, 2014:

GOVERNMENT OF UTTAR PRADESH
PERSONNEL SECTION-1
NOTIFICATION
---
Miscellaneous

76/No.13/5/98-ka-1-2014
Dated Lucknow, August 08, 2014

IN exercise of the powers conferred by the proviso to Article 309 of the Constitution, the Governor is pleased to make the following rules with a view to amending the Uttar Pradesh Government Servants Conduct Rules, 1956 :

**THE UTTAR PRADESH GOVERNMENT SERVANTS CONDUCT (AMENDMENT) RULES, 2014**

**Short title and commencement** **1.** (1) These rules may be called the Uttar Pradesh Government Servants Conduct (Amendment) Rules, 2014.

(2) They shall come into force at once.

**Insertion of new rule** **2.** In the Uttar Pradesh Government Servants Conduct Rules, 1956, after existing rule 3-A, the following new rule 3-B shall be inserted, namely:-

**''Action on the report of the Complaints Committee**

3-B. In case a complaint of sexual exploitation or sexual harassment against a Government servant is reported to the Incharge of a work place alongwith the appointing authority and if the appointing authority constitutes a Complaints Committee (in which the inclusion of atleast one female member will be essential) for the purpose of inquiry, the report/findings of such Complaints Committee shall be deemed to be an inquiry report and the appointing authority may impose minor penalty upon the delinquent Government servant on the basis of such report and there shall be no need to institute a separate inquiry.''

**By order,**
**Sd./-**
**(RAJIV KUMAR)**
**Principal Secretary**

# THE UTTAR PRADESH GOVERNMENT SERVANT (DISCIPLINE AND APPEAL) RULES, 1999

# THE UTTAR PRADESH GOVERNMENT SERVANT (DISCIPLINE AND APPEAL) RULES, 1999

## CONTENTS



In exercise of the powers conferred by the proviso to Article 309 of the Constitution and in supersession of the Civil Service (Classification, Control and Appeal) Rules,1930 and Punishment and Appeal Rules for Subordinate Service, Uttar Pradesh ,1932, the Governor is pleased to make the following rules:

1. Short title and commencement-

(1) These rules may be called the Uttar Pradesh Government Servant (Discipline and Appeal) Rules ,1999.

(2) They shall come into force at once.

(3) They shall apply to Government servants under the rules making power of the Governor under the proviso to Article 309 of the Constitution except the Officers and the Servants of the High Court Judicature at Allahabad covered under Article 229 of the Constitution of India.

**2. Definitions-**

In these rules, unless there is anything repugnant in the subject or context-

(a) "Appointing Authority" means the authority empowered to make appointment to the post under relevant service rules;

(b) "Constitution" means the Constitution of India;

(c) "Commission" means the Uttar Pradesh Public Service Commission;

(d) "Departmental Inquiry" means the inquiry under rules 7 of these rules;

(e) "Disciplinary Authority" means an Authority empowered under rule 6 to impose penalties;

(f) "Governor" means the Governor of Uttar Pradesh;

(g) "Government" means the State Government of Uttar Pradesh;

(h) "Government Servant" means a person appointed to public service and posts in connection with the affairs of the State of Uttar Pradesh ;

(j)"Group A, B, C and D posts" means the posts mentioned as such in the relevant Service Rules or the order of the Government issued from time to time in this regard;

(j) "Service" means the public services and posts in connection with the affair of the State of Uttar Pradesh.

**3. Penalties**

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed upon the government servants;

**Minor Penalties**

(i) Censure
(ii) Withholding of increments for a specified period.
(iii) Stoppage at an efficiency bar.
(iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of order .
(v) Fine incase of persons in holding Group D posts.

Provided that the amount of such fine shall in no case exceed twenty five percent of the months pay in which the fine is imposed.

**Major Penalties**

(i) Withholding of increments with cumulative effect;
(ii) Reduction to a lower post or grade time scale or to a lower stage in a time scale;
(iii) Removal from the service which does not disqualify from future employment;
(iv) Dismissal from the service which disqualify from future employment.

Explanation- The following shall not amount to penalty within the meaning of this rule, namely:

(i) Withholding of increment of a Government Servant for failure to pass a departmental examination or for failure to fulfill any other condition in accordance with the rules or orders governing the service;
(ii) Stoppage at the efficiency bar in the time scale of pay on account of ones not being found fit to cross the efficiency bar;
(iii) Reversion of a person appointed to probation to the service during or at the end of the period of probation in accordance with the terms of appointment or the rules and orders governing such probation.
(iv) Termination of the service of a person appointed on probation during or at the end of period of probation in accordance with the term of the service or the rules and order governing such probation.

**4.Suspension –**

(1) A Government Servant against whose conduct an inquiry is contemplated, or is proceeding may be placed under suspension pending the conclusion of the inquiry in the discretion of the Appointing Authority:

Provided that suspension should not be resorted to unless the allegations against the Government Servant are so serious that

in the event of their being established may ordinarily warrant major penalty :

Provided further that concerned Head of the Department empowered by the Governor by an order in this behalf may place a Government Servants or class of Government Servant belonging to Group 'A' and 'B' posts under suspension under this rule :

Provided also that in the case Government Servant or class of Government Servant belonging to Group 'C' and 'D' posts, the Appointing Authority may delegate its power under this rule to the next lower authority.

(2)A Government Servant in respect of, or against whom an investigation, inquiry or trial relating to a criminal charge, which is connected with his position as a Government Servant or which is likely to embarrass him in the discharge of his duties or which involves moral turpitude, is pending, may at the discretion of the appointing Authority or the Authority to whom the power of suspension has been delegated under these rules, be placed under suspension until termination of all proceedings relating to that charge.

(3)(a) A Government Servant shall be deemed to have been placed or as the case may be, continued to be place under suspension by an order of the Authority Competent to suspend, with effect from the date of his detention , if he is detained in custody, whether the detention is on criminal charge or otherwise , for a period exceeding forty eight hours.

(b)The aforesaid Government Servant shall after the release from the custody , inform in writing to the Competent Authority about his detention and may also make representation against the deemed suspension. The competent authority shall after considering the representation in the light of the facts and circumstances of the case as well as the provision contained in this rule, pass appropriate order continuing the deemed suspension from the date of release from custody or revoking or modifying it.

(4) Government Servant shall be deemed to have placed or, as the case may be, continued to be under suspension by an order of the Authority Competent to suspend under these rules, with effect from the date of his conviction if in the event of a conviction for an offence he is sentenced to a term of imprisonment exceeding forty eight hours and is not forthwith dismissed or removed consequent to such conviction.

Explanation- A period of forty eight hours referred to in sub-rule (1) be computed from the commencement of the imprisonment shall be taken to account.

(5)Where a penalty of dismissal or removal from service imposed upon a Government Servant is set aside in appeal or on review under these rules or under rules rescinded by these rules and the case is remitted for further inquiry or action or with any other directions-

(a)if he was under suspension immediately before the penalty was awarded to him , the order of his suspension shall, subject to any such

direction as aforesaid be deemed to have continued in force on and from the date of the original order of dismissal or removal;

(b)if he was not under suspension, he shall, if so directed by the appellate or Reviewing Authority, be deemed to have been placed under suspension by an order of the Appointing Authority on and from the date of the original order of dismissal or removal :

Provided that nothing in this sub-rule shall be construed as affecting the power of the Disciplinary Authority is a case where a penalty of dismissal or removal in service imposed upon a Government Servant is set aside in appeal or on review under these rules grounds other than the merits of the allegations which, the said penalty was imposed but the case is remitted for further inquiry or action or with any other directions to pass an order of suspension being further inquiry against him on those allegations so, however, that any such suspension shall not have retrospective effect.

(6)Where penalty of dismissal or removal from service imposed upon Government Servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the Appointing Authority, on consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegation on which the penalty of dismissal or removal was originally imposed, whether the allegations remain in their original form or are clarified or their particular better specified or any part thereof a minor nature omitted :

(a)if he was under suspension immediately before the penalty was awarded to him, the order of his suspension shall, subject to any direction of the appointing Authority, be deemed to have continued in force on and from the date of the original order of dismissal or removal

(b)if he was not under such suspension, he shall, if so effect by the Appointing Authority , be deemed to have been placed under suspension by an order of the Competent Authority and from the date of original order of dismissal or removal.

(7) where a Government Servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise) and any other disciplinary proceeding is connected against him during the continuance of that suspension, the Authority Competent to place him under suspension may, for reasons to be recorded by him in writing direct that the government Servant shall continue to be under suspension till termination of all or any such proceeding.

(8)any suspension ordered or deemed to have been ordered or to have continued in force under this rule shall continue in force until it is modified or revoke by the Competent Authority.

(9)A Government Servant placed under Suspension or deemed to have been placed under suspension under this rule shall be entitled to suspension allowance in accordance with the provisions of Fundamental rule 53 of Financial Hand book, Volume II, Parts II to IV.

**5.Pay and allowances etc. of the suspension period-** After the order is passed in the departmental enquiry or in the criminal case, as the case may be

under these rules, the decision as to the pay and allowances of the suspension period of the concerned Government Servant and also whether the said period shall be treated as spent on duty or not shall be taken by the Disciplinary Authority after giving a notice to the said Government Servant and calling for his explanation within a specified period under rule 45 of the Financial Hand Book Vol.-II Part II to IV.

**6.Disiciplinary Authority** – The Appointing Authority of a Government Servant shall be his Disciplinary Authority who, subject to the provision of these rules, may impose any of the penalties Specified in rule 3 on him :

Provided that no person shall be dismissed or removed by an authority subordinate to that by which he was actually appointed:

Provided further that the Head of Department notified under the Uttar Pradesh Class II services (Imposition of Minor Punishment ) Rules,1973, subject to the provisions of these rules, shall be Empowered to impose minor penalties mentioned in rule 3 of these rules:

Provided also that in case of a Government Servant belonging to Group 'C' and 'D' posts, the Government by a notified order , may delegate the power to impose any penalty, except dismissal or removal from service under these rules, to any Authority subordinate to the Appointing Authority and subject to such condition as may be prescribed therein.

**7-Procedure for imposing major penalties-** Before imposing any major penalty on a Government Servant, an inquiry shall be held in the following manner :

(i) The Disciplinary Authority may himself inquiry into the charges or appoint an Authority Subordinate to him as Inquiry Officer to inquire into the charges.

(ii) The Facts constituting the misconduct on which it is proposed to take action shall be reduced in the from of definite charge or charges to be called charge -sheet. The charge-sheet shall be approved by the Disciplinary Authority.

Provided that where the Appointing Authority is Governor, the charge –sheet may be approved by the Principal Secretary or the Secretary, as the case may be, of the concerned department.

(iii) The charge farmed shall be so precise and clear as to give sufficient indication to the charged Government Servant of the facts and circumstances against him. The proposed documentary evidences and the name of the witnesses proposed to prove the same along with oral evidence, if any, shall be mentioned in the charge-sheet.

(iv) The charge Government Servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to state whether he desires to cross-examine any witness mentioned in the charge-sheet and whether desires to give or produce evidence in his defence . He shall also be informed that in case he does not appear or file written statement on the specified date, it will be

presumed that he has none to furnish and inquiry officer shall proceed to complete the inquiry ex-parte.

(v) The charge-sheet, along with the copy of the documentary evidences mentioned therein and list of witnesses and their statements, if any shall be served on the charged Government Servant personally or by registered post at the address mentioned in the official records in case the charge-sheet could not be served in aforesaid manner, the charge- sheet shall be served by publication in a daily newspaper having wide circulation :

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge-sheet, the charge Government servant shall be permitted to inspect the same before the Inquiry Officer.

(vi) Where the charged Government Servant appears and admits charges, the Inquiry Officer shall submit his report to the Disciplinary Authority on the basis of such admission.

(vii) Where the charged Government Servant denies the charge the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charge Government Servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidences, the Inquiry officer shall call and record the oral evidence which the charged Government Servant desired in his written statement to be produced in h is defence :

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

(viii) The inquiry officer may summon any witnesses to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental inquiries (Enforcement of Attendance of witnesses and production of documents) Act 1976.

(ix) The Inquiry Officer may ask any question he pleases, at any time of any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges.

(x) Where the charged Government Servant does not appear on the date fixed in the inquiry or at any stage of the proceeding inspite of the service of the notice on him or having knowledge of the date the Inquiry Officer shall proceed with the inquiry exparte. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged Government Servant.

(xi) The disciplinary Authority, if it considers if necessary to do so, may by an order appoint a Government Servant or a legal practitioner to be known as "Presenting Officer" to present on its behalf the case in support of the charge.

(xii) The Government servant may take the assistance of any other Government Servant to present the case on this behalf but not engage a legal

practitioner for the purpose unless the presenting office appointed by the Disciplinary Authority is a legal practitioner of the disciplinary Authority having regard to the circumstance of the case so permits.

Provided that the rule shall not apply in following cases :

(i) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge.

or

(ii) Where the Disciplinary Authority is satisfied, that for reason to be recorded by it in writing, that it is not reasonably practicable to held an inquiry in the manner provided in these rules; or

(iii) Where the Governor satisfied that, in the interest of the security of the state, it is not expedient to hold an inquiry in the manner provided in these rules.

8. **Submission of Inquiry Report –** When the Inquiry is complete, the Inquiry Officer shall submit its inquiry report to the Disciplinary Authority alongwith all the records of the inquiry. The inquiry report shall contain a sufficient record of brief facts, the evidence and statement of the finding on each charge and the reasons thereof . The Inquiry Officer shall not make any recommendation about the penalty.

9. **Action on Inquiry Report-** (1) The Disciplinary authority may, for reason to be recorded in writing, remit the case for re-enquiry to the same or any other Inquiry Officer under intimation to the charged Government Servant . the Inquiry Officer shall thereupon proceed to hold the inquiry from such stage as directed by the Disciplinary Authority, according to the provisions of Rule 7.

(2) The Disciplinary Authority shall, if it disagrees with the finding of the Inquiry Officer on any charge, record its own finding thereon for reasons to be recorded.

(3) In case the charges are not proved ,the charged Government Servant shall be exonerated by the Disciplinary Authority of the charges and inform him accordingly.

(4) If the Disciplinary Authority, having regard to its finding on all or any of charges is of the opinion that any penalty specified in Rule 3 should be imposed on the charge Government Servant, he shall give a copy of the inquiry report and his finding recorded under sub-rule (2) to the charged Government Servant and require him to submit his representation if he so desires, within a reasonable

specified time. The Disciplinary Authority shall having regard to all the relevant records relating to the inquiry and representation of the charge Government Servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasoned order imposing one or more penalties mentioned in Rule 3 of these and communicate the same to the charged Government Servant.

10. **Procedure for imposing minor penalties-** (1) Where the Disciplinary Authority is satisfied that good and sufficient reasons exist for adopting such a course, it may, subject to the provisions of sub-rule (2) impose one or more of the minor penalties mentioned in Rule 3.

(2) The Government Servant shall be informed of the substance of the imputations against him and called upon to submit his explanation within a reasonable time. The Disciplinary Authority shall, after considering the said explanation, if any, and the relevant records, pass such order as he considers proper and where a penalty is imposed, reason thereof shall be given.

(3) The order shall be communicated to the concerned Government Servant.

11. **Appeal-** (1) Except the order passed under these rules by the Governor, the Government Servant shall be entitled to appeal to the next higher authority from an order passed by the Disciplinary Authority.

(2) The appeal shall be addressed and submitted to the Appellate Authority. A government Servant preferring an appeal shall do so in his own name. the appeal shall contain all material statements and arguments relied upon by the appellant.

(3) The appeal shall not contain any intemperate language. Any appeal, which contains such language may be liable to be summarily dismissed.

(4) The appeal shall be preferred within 90 days from the date of communication of impugned order. An appeal preferred after the said period shall be dismissed summarily.

12 **. Consideration of Appeal-** The Appellate Authority shall pass such order as mentioned in clauses (a)

to (d) of Rule 13 of these rules, in the appeal as he think proper after considering-

(a) Whether the facts on which the order was based have been established;
(b) whether the facts established afford ground for taking action; and
© whether the penalty is excessive, adequate or inadequate.

**13 Revision-** Notwithstanding anything contained in these rules, the Government may of its own motion or on the representation of concerned Government Servant call for the record of any case decided by an authority subordinate to it in exercise of any power conferred on such authority by these rules; and

**(a)** confirm, modify or reverse the order passed by such Authority; or
(b) direct that a further inquiry be held in the case, or
© reduce or enhance the penalty imposed by the order; or
(d) make such other order in the case as it may deem fit.

**14. Review** - The Governor may at any time, either on his own motion or on the representation of the concerned Government Servant, review any order passed by him under these rules, if it has brought to his notice that any new material or evidence which could not be produced or was not available at the time of passing the impugned order any material error of law occurred which has the effect of changing the nature of the case.

**15**. **Opportunity before imposing or enhancing penalty-** No order under Rules 12,13 and 14 imposing or enhancing any penalty shall be made unless the Government servant concerned has been given a reasonable opportunity of showing cause against the proposed imposition or enhancement, as the case may be.

**16. Consultation with the commission-** Before any order is passed by the Government under these rules, the Commission , as required under the Uttar Pradesh Public Service Commission (Limitation of Function) Regulation, 1954 as amended from time, shall also be consulted.

**17. Rescission and savings-** (1) the Civil Service (Classification, Control and Appeal ) Rules, 1930 and the Punishment and Appeal Rules for Subordinate Services, Uttar Pradesh, 1932 hereby rescinded.

**(2)** Notwithstanding such rescission -

(a) delegation of power mentioned in Punishment and Appeal Rules for Subordinate Service Uttar Pradesh, 1932 and any

order issued under the Civil Service (Classification, Control and Appeal )

rules,1930 or Punishment and Appeal Rules for Subordinate Services, Uttar Pradesh, 1932 delegating the power of imposing any of the penalties mentioned in rule 3 or power suspension any authority shall be deemed to have been issued under these rules and shall remain valid unless cancelled or rescinded;

(b) any inquiry, appeal, revision or review pending on the date of coming into force of these shall be continued and concluded in accordance with the provision of these rules;

(c) nothing in these rules shall operate to deprive any person of any right of appeal, revision or review which he would have had if these rules had not been in force in respect of any order passed before the commencement of these rules and such appeal, revision or review shall be preferred under these rules and disposed of accordingly as if the provision of this rule were force at all material times.

उत्तर प्रदेश शासन
कार्मिक अनुभाग-1
77/ संख्या-13/ 9/ 98-का-1-2014
लखनऊ :: दिनांक 08 अगस्त, 2014

**अधिसूचना**
प्रकीर्ण

संविधान के अनुच्छेद, 309 के परन्तुक द्वारा प्रदत्त शक्ति का प्रयोग करके, राज्यपाल "उत्तर प्रदेश सरकारी सेवक (अनुशासन एवं अपील) नियमावली, 1999' में संशोधन करने की दृष्टि से निम्नलिखित नियमावली बनाते हैं :-

**"उत्तर प्रदेश सरकारी सेवक (अनुशासन एवं अपील) (प्रथम संशोधन) नियमावली, 2014"**

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| संक्षिप्त नाम और प्रारम्भ | 1. | (1) | यह नियमावली "उत्तर प्रदेश सरकारी सेवक (अनुशासन एवं अपील) (प्रथम संशोधन) नियमावली, 2014" कही जायेगी। |
| | | (2) | यह तुरन्त प्रवृत्त होगी। |
| नियम 3 का संशोधन | 2. | | उत्तर प्रदेश सरकारी सेवक (अनुशासन एवं अपील) नियमावली, 1999 में, जिसे आगे उक्त नियमावली कहा गया है, नीचे स्तम्भ 1 में दिये गये नियम 3 के विद्यमान भाग के स्थान पर स्तम्भ 2 में दिया गया भाग रख दिया जायेगा, अर्थात् :- |

| स्तम्भ-1 विद्यमान भाग | स्तम्भ-2 एतदद्वारा प्रतिस्थापित भाग |
|---|---|
| शास्तियाँ 3. **लघु शास्तियाँ** | **लघु शास्तियाँ** |
| (एक) परिनिन्दा; | (एक) परिनिन्दा; |
| (दो) किसी विनिर्दिष्ट अवधि के लिए वेतनवृद्धि को रोकना, | (दो) किसी विनिर्दिष्ट अवधि के लिए वेतनवृद्धि को रोकना, |
| (तीन) किसी दक्षतरोध को रोकना, | (तीन) किसी दक्षतारोध को रोकना, |
| (चार) आदेशों की उपेक्षा या उनका उल्लंघन करने के कारण सरकार को हुई आर्थिक हानि का पूर्णत: या अंशत: वेतन से वसूल किया | (चार) आदेशों की उपेक्षा या उनका उल्लंघन करने के कारण सरकार को हुई आर्थिक हानि का पूर्णत: या अंशत: वेतन से वसूल किया |

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|---|---|---|---|
| | | जाना, | जाना, |
| | | (पांच) समूह "घ" पदों को धारण करने वाले व्यक्तियों के मामले में जुर्माना: | (पांच) समूह "घ" पदों को धारण करने वाले व्यक्तियों के मामले में जुर्माना: |
| | | परन्तु ऐसे जुर्माने की धनराशि किसी भी स्थिति में, उस मास के वेतन के, जिसमें जुर्माना अधिरोपित किया गया हो, पच्चीस प्रतिशत से अधिक नहीं होगी। | परन्तु यह कि ऐसे जुर्माने की धनराशि किसी भी स्थिति में, उस मास के वेतन के, जिसमें जुर्माना अधिरोपित किया गया हो, पच्चीस प्रतिशत से अधिक नहीं होगी; |
| | | | (छः) अवचार |
| नियम 10 का प्रतिस्थापन | (3) | उक्त नियमावली में, नीचे स्तम्भ 1 में दिये गये विद्यमान नियम 10 के स्थान पर स्तम्भ 2 में दिया गया नियम रख दिया जायेगा, अर्थात् :- | |
| लघु शास्तियाँ अधिरोपित करने के लिए प्रक्रिया | 10. | (1)जहां अनुशासनिक प्राधिकारी का समाधान हो जाय कि ऐसी प्रक्रिया को अंगीकार करने के लिए समुचित और पर्याप्त कारण हैं, वहां वह उपनियम (2) के उपबन्धों के अध्यधीन रहते हुए नियम 3 में उल्लिखित एक या अधिक लघु शास्तियाँ अधिरोपित कर सकेगा। | (1)जहां अनुशासनिक प्राधिकारी का समाधान हो जाय कि ऐसी प्रक्रिया को अंगीकार करने के लिए समुचित और पर्याप्त कारण हैं, वहां वह उपनियम (2) के उपबन्धों के अध्यधीन रहते हुए नियम 3 में उल्लिखित एक या अधिक लघु शास्तियाँ अधिरोपित कर सकेगा। |
| | | (2)सरकारी सेवक को उसके विरूद्ध अभ्यारोपणों का सार सूचित किया जायेगा और उससे एक युक्तियुक्त समय के भीतर अपना स्पष्टीकरण प्रस्तुत करने की अपेक्षा की जायेगी। अनुशासनिक अधिकारी उक्त स्पष्टीकरण, | (2)सरकारी सेवक को उसके विरूद्ध अभ्यारोपणों का सार सूचित किया जायेगा और उससे एक युक्तियुक्त समय के भीतर अपना स्पष्टीकरण प्रस्तुत करने की अपेक्षा की जायेगी। अनुशासनिक अधिकारी उक्त स्पष्टीकरण, |

यदि कोई हो, और सुसंगत अभिलेखों पर विचार करने के पश्चात् ऐसे आदेश जैसा वह उचित समझता है, पारित करेगा और जहां कोई शास्ति अधिरोपित की जाय वहां उसके कारण दिये जायेंगे। आदेश सम्बन्धित सरकारी सेवक को संसूचित किया जायेगा।

यदि कोई हो, और सुसंगत अभिलेखों पर विचार करने के पश्चात् ऐसे आदेश जैसा वह उचित समझता है, पारित करेगा और जहां कोई शास्ति अधिरोपित की जाय वहां उसके कारण दिये जायेंगे । आदेश सम्बन्धित सरकारी सेवक को संसूचित किया जायेगा।

(3) यदि किसी कर्मचारी के विरूद्ध यौन शोषण या यौन उत्पीड़न की शिकायत कार्य स्थल के प्रभारी सहित नियुक्ति प्राधिकारी को की जाती है और यदि नियुक्ति प्राधिकारी जांच के प्रयोजनार्थ एक शिकायत समिति (जिसमें एक महिला सदस्य का होना अनिवार्य होगा) गठित करता है तो ऐसी शिकायत समिति की रिपोर्ट/ निष्कर्ष को जांच रिपोर्ट माना जाएगा और नियुक्ति प्राधिकारी ऐसी रिपोर्ट के आधार पर अपचारी सरकारी सेवक पर लघु शास्ति आरोपित कर सकता है और एक पृथक जांच संस्थित करने की आवश्यकता नहीं होगी।

आज्ञा से,
ह0/ -
(राजीव कुमार)
प्रमुख सचिव।

IN pursuance of the provisions of clause (3) of Article 348 of the Constitution, the Governor is pleased to order the publication of the following English translation of notification no. 9/98-ka-1-2014, dated August 08 ,2014:

GOVERNMENT OF UTTAR PRADESH
PERSONNEL SECTION-1
NOTIFICATION
---
Miscellaneous

77/No. 13/9/98-ka-1-2014
Dated Lucknow, August 08 ,2014

IN exercise of the powers conferred by the proviso to Article 309 of the Constitution, the Governor is pleased to make the following rules with a view to amending the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999:

THE UTTAR PRADESH GOVERNMENT SERVANT (DISCIPLINE AND APPEAL) (FIRST AMENDMENT) RULES, 2014

Short title and commencement

**1.**(1) These rules may be called the Uttar Pradesh Government Servant (Discipline and Appeal) (First Amendment) Rules, 2014.

(2) They shall come into force atonce.

Amendment of rule 3

**2.** In the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999, hereinafter referred to as the said rules, for existing part of rule 3 set out in column 1 below, the part as set out in column 2 shall be substituted, namely :-

| **COLUMN-1** Existing part | **COLUMN-2** Part as hereby substituted |
|---|---|
| Minor Penalties | Minor Penalties |
| (i) Censure; | (i) Censure; |
| (ii)Withholding of increments for a specified period; | (ii)Withholding of increments for a specified period; |
| (iii)Stoppage at an efficiency bar; | (iii)Stoppage at an efficiency bar; |
| (iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders; | (iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders; |
| (v) Fine in case of persons holding Group 'D' posts: Provided that the amount of such fine shall in no case exceed twenty five percent of the months pay in which the fine is | (v) Fine in case of persons holding Group 'D' posts: Provided that the amount of such fine shall in no case exceed twenty five percent of the months pay in which the fine is |

imposed.

imposed;
(vi)Misconduct.

Substitution of rule 10

**3.** In the said rules, for existing rule 10 set out in column 1 below, the rule as set out in column 2 shall be substituted, namely :-

| | **COLUMN-1** Existing rule | **COLUMN-2** Rule as hereby substituted |
|---|---|---|
| Procedure for imposing minor penalties | 10. (1)Where the Disciplinary Authority is satisfied that good and sufficient reasons exist for adopting such a course, it may, subject to the provisions of sub-rule (2) impose one or more of the minor penalties mentioned in rule 3.<br>(2) The Government Servant shall be informed of the substance of the imputations against him and called upon to submit his explanation within a reasonable time. The Disciplinary Authority shall, after considering the said explanation, if any, and the relevant records, pass such orders as he considers proper and where a penalty is imposed, reason thereof shall be given. The order shall be communicated to the concerned Government Servant. | Procedure for imposing minor penalties<br>10.(1)Where the Disciplinary Authority is satisfied that good and sufficient reasons exist for adopting such a course, it may, subject to the provisions of sub-rule (2) impose one or more of the minor penalties mentioned in rule3.<br>(2) The Government Servant shall be informed of the substance of the imputations against him and called upon to submit his explanation within a reasonable time. The Disciplinary Authority shall, after considering the said explanation, if any, and the relevant records, pass such orders as he considers proper and where a penalty is imposed, reason thereof shall be given. The order shall be communicated to the concerned Government Servant.<br>(3) In case a complaint of sexual exploitation or sexual harassment against a Government servant is reported to the Incharge of a work place alongwith the appointing authority and if the appointing authority constitutes a Complaints Committee (in which the inclusion of atleast one female member will be essential) for the purpose of inquiry, the report/findings |

of such Complaints Committee shall be deemed to be an inquiry report and the appointing authority may impose minor penalty upon the delinquent Government servant on the basis of such report and there shall be no need to institute a separate inquiry.

**By order,**
**Sd./-**
**( RAJIV KUMAR )**
**Principal Secretary**

# THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) RULES, 2013

रजिस्ट्री सं० डी० एल०-33004/99 REGD. NO. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

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## महिला एवं बाल विकास मंत्रालय

## अधिसूचना

नई दिल्ली, 9 दिसम्बर, 2013

**सा.का.नि. 769(अ).**—केंद्रीय सरकार, महिलाओं का कार्यस्थल पर लैंगिक उत्पीड़न (निवारण, प्रतिषेध एवं प्रतितोष) अधिनियम, 2013 (2013 का 14) की धारा 29 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित नियम बनाती है, अर्थात्:—

1. **संक्षिप्त नाम और प्रारंभ.**—(1) इन नियमों का संक्षिप्त महिलाओं का कार्यस्थल पर लैंगिक उत्पीड़न (निवारण, प्रतिषेध एवं प्रतितोष) नियम, 2013 है।

(2) ये राजपत्र में प्रकाशन की तारीख को प्रवृत्त होंगे।

2. **परिभाषाएं.**—इन नियमों में, जब तक संदर्भ में अन्यथा अपेक्षित न हो, --

(क) "अधिनियम" से कार्यस्थल पर महिलाओं का कार्यस्थल पर लैंगिक उत्पीड़न (निवारण, प्रतिषेध एवं प्रतितोष) अधिनियम, 2013 (2013 का 14) अभिप्रेत है;

(ख) "शिकायत" से धारा 9 के अधीन की गई शिकायत अभिप्रेत है;

(ग) "शिकायत समिति" से आंतरिक समिति अथवा स्थानीय समिति अभिप्रेत है;

(घ) "घटना" से धारा 2 के खंड (ढ) में यथा-परिभाषित लैंगिक उत्पीड़न की घटना अभिप्रेत है;

(ङ) "धारा" से अधिनियम की कोई धारा अभिप्रेत है;

(च) "विशेष शिक्षक" से कोई ऐसा व्यक्ति अभिप्रेत है जो विशेष जरूरतों वाले लोगों के साथ ऐसे ढंग से संचार करने के लिए प्रशिक्षित है, जिससे उनके व्यक्तिगत मतभेदों एवं आवश्यकताओं का समाधान होता है;

(छ) यहां शब्द और पद जो यहां प्रयुक्त हैं और परिभाषित नहीं किए गए हैं, किंतु अधिनियम मे परिभाषित किए गए हैं, उनके अर्थ वही होंगे, जो अधिनियम में दिए गए हैं।

3. आंतरिक समिति के सदस्यों के लिए फीस या भत्ते :

(1) गैर-सरकारी संगठनों में नियुक्त सदस्य, आंतरिक समिति की कार्यवाहियों के आयोजन के लिए प्रतिदिन 200 रुपये के भत्ते के हकदार होंगे, और उक्त सदस्य रेलगाड़ी से थ्री टायर वातानुकूलन या वातानुकूलित बस से तथा आटोरिक्शा या टैक्सी से अथवा यात्रा पर उसके द्वारा खर्च की गई वास्तविक राशि, जो भी, कम हो प्रतिपूर्ति के भी हकदार होंगे।

(2) नियोक्ता उप-नियम (1) में निर्दिष्ट भत्तों के संदाय के लिए उत्तरदायी होगा ।

4. **लैंगिक उत्पीड़न से संबंधित मुद्दों से परिचित व्यक्ति :** धारा 7 की उप–धारा (1) के खण्ड (ग) के प्रयोजन के लिए लैंगिक उत्पीड़न से संबंधित मुद्दों से परिचित व्यक्ति ऐसा व्यक्ति होगा जिसे लैंगिक उत्पीड़न से संबंधित मुद्दों पर विशेषज्ञता प्राप्त हो तथा इसमें निम्नलिखित में से कोई सम्मिलित हो सकेगा –

(क) समाज कार्य के क्षेत्र में कम से कम 5 साल के अनुभव वाला कोई सामाजिक कार्यकर्ता जो महिलाओं के सशक्तीकरण तथा विशिष्टतया कार्यस्थल पर लैंगिक उत्पीड़न की समस्या को दूर करने के लिए अनुकूल सामाजिक स्थितियों का सृजन करने का मार्ग प्रशस्त करता है;

(ख) ऐसा व्यक्ति जिसे श्रम, रोजगार, सिविल या दांडिक विधि में अर्हता प्राप्त है।

5. **स्थानीय समिति के अध्यक्ष तथा सदस्यों के लिए फीस या भत्ता :**

(1) स्थानीय समिति के अध्यक्ष उक्त समिति की कार्यवाहियों के आयोजन के लिए प्रतिदिन 250 रुपये (दो सौ पचास रुपये) के भत्ते के लिए हकदार होंगे।

(2) धारा 7 की उप–धारा (1) के खंड (ख) और खंड (घ) के अधीन नामनिर्दिष्ट सदस्यों से भिन्न स्थानीय समिति के सदस्य, उक्त समिति की कार्यवाहियों के आयोजन के लिए प्रतिदिन दो सौ रूपये के भत्ते के हकदार होंगे और रेलगाड़ी से थ्री टायर वातानुकूलन, वातानुकूलित बस से तथा आटोरिक्शा या टैक्सी से अथवा यात्रा पर उसके द्वारा खर्च की गई वास्तविक लागत जो भी कम हो, की प्रतिपूर्ति के भी हकदार होंगे।

(3) जिला अधिकारी, उपनियम (1) और उपनियम (2) में निर्दिष्ट भत्तों के संदाय के लिए उत्तरदायी होगा ।

6. **लैंगिक उत्पीड़न की शिकायत :** धारा 9 की उप–धारा (2) के प्रयोजन के लिए,

(i) जहां व्यथित महिला, अपनी शारीरिक असमर्थता के कारण शिकायत करने में असमर्थ है, वहां निम्नलिखित द्वारा शिकायत फाइल की जा सकती है –

(क) उसका नातेदार या मित्र ; अथवा ;

(ख) उसका सहकर्मी; या

(ग) राष्ट्रीय महिला आयोग या राज्य महिला आयोग का कोई अधिकारी; या

(घ) व्यथित महिला की लिखित सम्मति से कोई ऐसा व्यक्ति जिसे घटना की जानकारी है ।

(ii) जहां व्यथित महिला, अपनी मानसिक अक्षमता के कारण शिकायत करने में असमर्थ है, वहां निम्नलिखित द्वारा शिकायत फाइल की जा सकती है –

(क) उसका नातेदार या मित्र; अथवा

(ख) कोई विशेष शिक्षक; या

(ग) कोई अर्हित मनोविकार विज्ञानी या मनोवैज्ञानिक; अथवा

(घ) संरक्षक या प्राधिकारी जिसके अधीन वह उपचार या देखरेख प्राप्त कर रही है; अथवा

(ङ) उसके नातेदार या दोस्त या विशेष शिक्षक या अर्हता–प्राप्त मनोविकार विज्ञानी या मनोवैज्ञानिक या संरक्षक अथवा प्राधिकारी जिसके अधीन वह उपचार या देखरेख प्राप्त कर रही है, के साथ संयुक्त रूप से कोई ऐसा व्यक्ति जिसे लैंगिक उत्पीड़न की जानकारी है।

(iii) जहां व्यथित महिला, किसी कारण से शिकायत करने में असमर्थ है, वहां उसकी लिखित सम्मति से ऐसे व्यक्ति द्वारा शिकायत फाइल की जा सकती है, जिसे घटना की जानकारी है।

(iv) जहां व्यथित महिला की मृत्यु हो जाती है वहां एक शिकायत, घटना के जानकार द्वारा उसके विधिक वारिस की सम्मति से लिखित रूप में फाइल की जा सकेगी ।

7. **शिकायत की जांच का ढंग –**

(1) शिकायत फाइल करते समय, धारा 11 के उपबंधों के अध्यधीन शिकायतकर्ता समर्थक दस्तावेजों तथा साक्षियों के नाम एवं पता के साथ शिकायत की छह प्रतियां शिकायत समिति को प्रस्तुत करेगा।

(2) शिकायत प्राप्त होने पर, शिकायत समिति उपनियम (1) के अधीन व्यथित महिला से प्राप्त प्रतियों में से एक प्रति सात कार्य दिवस की अवधि के भीतर प्रत्यर्थी को भेजेगी।

(3) प्रत्यर्थी उपनियम (1) के अधीन विनिर्दिष्ट दस्तावेजों की प्राप्ति की तारीख से दस दिन से अनधिक अवधि के भीतर दस्तावेजों की सूची तथा साक्षियों के नाम एवं पता के साथ शिकायत पर अपना उत्तर फाइल करेगा।

(4) शिकायत समिति नैसर्गिक न्याय के सिद्धांतों के अनुसार, शिकायत की जांच करेगी।

(5) शिकायत समिति को जांच की कार्यवाही समाप्त करने या शिकायत पर एक पक्षीय निर्णय देने का अधिकार होगा, यदि शिकायतकर्ता या प्रत्यर्थी पर्याप्त कारण के बिना यथास्थिति अध्यक्ष या पीठासीन अधिकारी द्वारा आयोजित लगातार तीन सुनवाइयों में अनुपस्थित रहता है या रहती है :

परंतु संबंधित पक्षकार को अग्रिम में लिखित रूप में पन्द्रह दिन का नोटिस दिए बिना ऐसी समाप्ति या एक पक्षीय आदेश पारित नहीं किया जा सकेगा।

(6) पक्षकारों को शिकायत समिति के समक्ष कार्यवाही के किसी चरण में अपने मामले का प्रतिनिधित्व करने के लिए किसी विधिक व्यावसायी को लाने की अनुमति नहीं होगी।

(7) जांच का संचालन करते समय, शिकायत समिति के कम से कम तीन सदस्य जिसमें यथास्थिति पीठासीन अधिकारी अथवा अध्यक्ष, हो, उपस्थित होंगे ।

8. **जांच लंबित रहने के दौरान शिकायतकर्ता को अन्य अनुतोष** : व्यथित महिला के लिखित रूप में अनुरोध पर, शिकायत समिति नियोक्ता से निम्नलिखित की सिफारिश कर सकती है :

(क) व्यथित महिला के कार्य निष्पादन या उसकी गोपनीय रिपोर्ट लिखने तथा इसे किसी अन्य अधिकारी को आबंटित करने से प्रत्यर्थी को अवरुध करना ।

(ख) शैक्षिक संस्था के मामले में व्यथित महिला की किसी शैक्षिक गतिविधि का पर्यवेक्षण करने से प्रत्यर्थी को अवरुध करना ।

9. **लैंगिक उत्पीड़न के लिए कार्रवाई करने की रीति** : ऐसे मामलों को छोड़कर, जहां सेवा नियम विद्यमान हैं जहां शिकायत समिति इस निष्कर्ष पर पहुंचती है कि प्रत्यर्थी के विरुद्ध अभिकथन साबित हो गए हैं, यह यथास्थिति नियोक्ता या जिलाधिकारी से कार्रवाई करने की सिफारिश कर सकती है जिसमें लिखित रूप में क्षमा याचना करना, चेतावनी जारी करना, डांटना या निंदा करना, प्रोन्नति रोकना, वेतनबढ़ोत्तरी या वेतनवृद्धि रोकना, प्रत्यर्थी को सेवा समाप्ति करना या परामर्श सत्र में भाग लेने या सामुदायिक सेवा करने का आदेश देना शामिल है।

10. **मिथ्या अथवा दुर्भावपूर्ण शिकायत अथवा मिथ्या साक्ष्य पर कार्रवाई** : उन मामलों के सिवाय जहां सेवा नियम विद्यमान हैं, जहां शिकायत समिति इस निष्कर्ष पर पहुंचती है कि प्रत्यर्थी के विरुद्ध अभिकथन दुर्भावपूर्ण है अथवा व्यथित महिला अथवा शिकायत करने वाली अन्य किसी व्यक्ति ने यह जानते हुए कि यह मिथ्या है शिकायत की है अथवा व्यथित महिला या शिकायत करने वाले किसी व्यक्ति ने कूटरचित अथवा भ्रामक दस्तावेज प्रस्तुत किए हैं तो यह यथास्थिति नियोक्ता अथवा जिला अधिकारी को नियम 9 के उपबंधों के अनुसार कार्रवाई करने की सिफारिश कर सकेगी ।

11. **अपील** : धारा 18 के उपबंधों के अधीन, धारा 13 की उप–धारा (2) के अधीन या धारा 13 की उप–धारा (3) के खण्ड (i) या खण्ड (ii) के अधीन अथवा धारा 14 की उपधारा (1) या उप–धारा (2) या धारा 17 के अधीन की गयी सिफारिशों या ऐसी सिफारिशों को कार्यान्वित न किए जाने से व्यथित कोई व्यक्ति औद्योगिक नियोजन (स्थायी आदेश) अधिनियम, 1946 (1946 का 20) की धारा 2 के खण्ड (क) के अधीन अधिसूचित अपीली प्राधिकारी को अपील कर सकेगा।

12. **धारा 16 के उपबंधों के उल्लंघन के लिए दंड** – धारा 17 के उपबंधों के अधीन, यदि कोई व्यक्ति धारा 16 के उपबंधों का उल्लंघन करता है, तो नियोक्ता ऐसे व्यक्ति से शास्ति के रूप में पांच हजार रूपये की राशि की वसूली करेगा ।

13. **कार्यशालाएं आदि आयोजित करने की रीति** : धारा 19 के उपबंधों के अधीन, प्रत्येक नियोक्ता,–

(क) कार्यस्थल पर लैंगिक उत्पीड़न के प्रतिशेध, निवारण एवं प्रतितोष के लिए एक आंतरिक नीति या चार्टर या संकल्प या घोषणा तैयार करेगा तथा उसका व्यापक प्रसार करेगा, जिसका आशय लिंग संवेदी सुरक्षित स्थानों को बढ़ावा देना तथा ऐसे अंतर्निहित कारकों का निवारण करना है, जो महिलाओं के विरुद्ध प्रतिकूल कार्य परिवेश में योगदान करते हैं;

(ख) आंतरिक समिति के सदस्यों के लिए, प्रबोधन कार्यक्रमों एवं सेमिनारों का क्रियान्वयन करेगा;

(ग) कर्मचारी जागरुकता कार्यक्रमों का क्रियान्वयन करेगा तथा संवादों के लिए मंच का सृजन करेगा जिसमें पंचायती राज संस्थाएं, ग्राम सभा, महिला समूह, मातृ समितियां, किशोर समूह, शहरी स्थानीय निकाय तथा कोई अन्य निकाय, जिसे आवश्यक समझा जाए, अंतर्वलित हो सकते हैं;

(घ) आंतरिक समिति के सदस्यों के लिए क्षमता निर्माण एवं कौशल निर्माण कार्यक्रमों का संचालन करेगा;

(ङ) आंतरिक समिति के सभी सदस्यों के नामों एवं संपर्क के ब्यौरों की घोषणा करेगा;

(च) अधिनियम के उपबंधों के बारे में कर्मचारियों को संवेदनशील बनाने के लिए, कार्यशालाओं एवं जागरूकता कार्यक्रमों के आयोजन के लिए, राज्य सरकारों द्वारा विकसित मापदंडों का उपयोग करेगा।

14. **वार्षिक रिपोर्ट तैयार करना** : वार्षिक रिपोर्ट जिसे धारा 21 के अंतर्गत शिकायत समिति द्वारा तैयार किया जाएगा, में निम्नलिखित ब्यौरे होंगे :

(क) वर्ष में प्राप्त लैंगिक उत्पीड़न की शिकायतों की संख्या;

(ख) ऐसी शिकायतों की संख्या जिनका वर्ष के दौरान निस्तारण किया गया;

(ग) ऐसे मामलों की संख्या जो नब्बे दिन से अधिक अवधि तक लंबित हैं;

(घ) लैंगिक उत्पीड़न के विरुद्ध क्रियान्वित कार्यशालाओं या जागरुकता कार्यक्रमों की संख्या;

(ङ) नियोक्ता या जिला अधिकारी द्वारा की गई कार्रवाई का स्वरूप।

[फा. सं. 19–5/2013–डब्ल्यूडब्ल्यू]

डॉ. श्रीरंजन, संयुक्त सचिव

**MINISTRY OF WOMEN AND CHILD DEVELOPMENT**

**NOTIFICATION**

New Delhi, the 9th December, 2013

**G.S.R. 769(E).**—In exercise of the powers conferred by section 29 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013), the Central Government hereby makes the following rules, namely:—

1. **Short title and commencement.** – (1) These rules may be called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. **Definitions.** – In these rules, unless the context otherwise requires,-

(a) "Act" means the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013);
(b) "complaint" means the complaint made under section 9;
(c) "Complaints Committee" means the Internal Committee or the Local Committee, as the case may be;
(d) "incident" means an incident of sexual harassment as defined in clause (n) of section 2;
(e) "section" means a section of the Act;
(f) "special educator" means a person trained in communication with people with special needs in a way that addresses their individual differences and needs;
(g) words and expressions used herein and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. **Fees or allowances for Member of Internal Committee.-** (1) The Member appointed from amongst non-government organisations shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the Internal Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air condition or air conditioned bus and auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less.

The employer shall be responsible for the payment of allowances referred to in sub-rule (1).

4. **Person familiar with issues relating to sexual harassment.-** Person familiar with the issues relating to sexual harassment for the purpose of clause (c) of sub-section (1) of section 7 shall be a person who has expertise on issues relating to sexual harassment and may include any of the following:-

(a) a social worker with at least five years' experience in the field of social work which leads to creation of societal conditions favourable towards empowerment of women and in particular in addressing workplace sexual harassment;
(b) a person who is familiar with labour, service, civil or criminal law.

1. **Fees or allowances for Chairperson and Members of Local Committee.-** (1) The Chairperson of the Local Committee shall be entitled to an allowance of two hundred and fifty rupees per day for holding the proceedings of the said Committee.

(2) The Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) of section 7 shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the said Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air condition or air conditioned bus and auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less.

The District Officer shall be responsible for the payment of allowances referred to in sub-rules (1) and (2).

6. **Complaint of sexual harassment.** – For the purpose of sub-section (2) of Section 9,-

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

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

(ii) where the aggrieved woman is unable to make a complaint on account of her mental incapacity, a complaint may be filed by-
(a) her relative of friend; or
(b) a special educator; or
(c) a qualified psychiatrist or psychologist; or
(d) the guardian or authority under whose care she is receiving treatment or care; or
(e) any person who has knowledge of the incident jointly with her relative or friend or a special educator or qualified psychiatrist or psychologist, or guardian or authority under whose care she is receiving treatment or care;

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

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

7. **Manner of inquiry into complaint.-** (1) Subject to the provisions of section 11, at the time of filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses.

(2) On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule (1) to the respondent within a period of seven working days.

(3) The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents specified under sub-rule (1).

(4) The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.

(5) The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an *ex-parte* decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be:

Provided that such termination or ex-parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.

(6) The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.

(7) In conducting the inquiry, a minimum of three Members of the Complaints Committee including the Presiding Officer or the Chairperson, as the case may be, shall be present.

8. **Other relief to complainant during pendency of inquiry.-**The Complaints Committee at the written request of the aggrieved woman may recommend to the employer to-
(a) restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, and assign the same to another officer;
(b) restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman.

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

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**10. Action for false or malicious complaint or false evidence.**- Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or District Officer, as the case may be, to take action in accordance with the provisions of rule 9.

**11. Appeal.**- Subject to the provisions of section 18, any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clauses (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the appellate authority notified under clause (a) of section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).

**12. Penalty for contravention of provisions of section 16.**- Subject to the provisions of section 17, if any person contravenes the provisions of section 16, the employer shall recover a sum of five thousand rupees as penalty from such person.

**13. Manner to organise workshops, etc.**– Subject to the provisions of section 19, every employer shall-

(a) formulate and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and redressal of sexual harassment at the workplace intended to promote gender sensitive safe spaces and remove underlying factors that contribute towards a hostile work environment against women;
(b) carry out orientation programmes and seminars for the Members of the Internal Committee ;
(c) carry out employees awareness programmes and create forum for dialogues which may involve Panchayati Raj Institutions, Gram Sabha, women's groups, mothers' committee, adolescent groups, urban local bodies and any other body as may be considered necessary;
(d) conduct capacity building and skill building programmes for the Members of the Internal Committee;
(e) declare the names and contact details of all the Members of the Internal Committee;
(f) use modules developed by the State Governments to conduct workshops and awareness programmes for sensitising the employees with the provisions of the Act.

**14. Preparation of annual report.**- The annual report which the Complaints Committee shall prepare under Section 21, shall have the following details:-

(a) number of complaints of sexual harassment received in the year;
(b) number of complaints disposed off during the year;
(c ) number of cases pending for more than ninety days;
(d) number of workshops or awareness programme against sexual harassment carried out;
(e) nature of action taken by the employer or District Officer.

[F. No. 19-5/2013-WW]

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# SUSPENSION

**What is suspension?**

Suspension is a temporary deprivation of office. The contract of service is not terminated. However, the Govt. servant placed under suspension is not allowed to discharge the functions of his office during the period of his suspension. It is not a penalty under The Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999. It is only an intermediate step. However, it visits the Government servant with civil consequences. An appeal lies against the order of suspension (under Rule 11(i)) and the employee is entitled to receive subsistence allowance during the period of suspension.

An order of suspension should be made with considerable amount of care and thought. The number of suspended officials is to be kept at the minimum. Hence, before placing a Govt. servant under suspension, it should be found out whether the purpose could be achieved by transferring him to another place or asking him to go on leave, etc.

**Who can suspend? (Rule 4(1)**

Before passing an order of suspension, the authority proposing to make the order should verify whether it is competent to do so. An order of suspension made by an authority not competent do so is illegal and will give cause of action for:

a) Setting aside of the order of suspension; and

b) Claim for full pay and allowances

The following authorities are empowered to place a Govt. servant under suspension:-

(a) Appointing authority or any authority to which the Appointing authority is subordinate.

(b) Disciplinary authority.

(c) Any other authority empowered in this behalf by the Governor by general or special order.

Whenever an Authority, lower than the Appointing Authority places a Government servant under suspension, the circumstances leading to suspension must be communicated to the Appointing Authority forthwith.

**Suspension of Persons on deputation-** Where the services of a Government servant are lent by one department to another department or borrowed from or lent to a State Government or an authority subordinate thereto or borrowed from or lent to a local authority or other authority, the borrowing authority can suspend such Government servant. The lending authority should however, be informed forthwith of the circumstances leading to the Order of suspension.

**When can a Government servant be placed under suspension?**

Rule 4(1)

As per rule 4(1) a government

servant may be placed under suspension under the following three situations:

i. Where a disciplinary proceeding is contemplated or is pending; or

ii. Where in the opinion of the competent authority, he has engaged himself in activities prejudicial to the interest of the security of the State; or

iii. Where a case against him in respect of any criminal offence is under investigation, enquiry or trial ;

**When Government servant is involved in dowry death case.** Whenever a Govt. servant is involved in a dowry death case and a case has been registered by the police against him under Sec, 304-B of IPC, in the event of his arrest, he shall be placed under suspension irrespective of the duration of the custody. Even if he is not arrested, he will be placed under suspension immediately on submission of the report under sub-section (2) of Section 173 of the Cr.P.C, 1973 by Police to the Magistrate, if the report prima-facie indicates that the offence has been committed by the Government servant.

**Guiding factor for deciding whether or not to place a Govt servant under suspension**

Public interest should be the guiding factor in deciding whether or not a Government servant, including a Government servant on leave, should be placed under suspension; or whether such action should be taken even while the

matter is under investigation and before a prima-facie case has been established.

Certain circumstances under which it may be considered appropriate to do so are indicated below for the guidance of competent authorities:

(i) Where the continuance in office of the Government servant will prejudice investigation, trial or any enquiry (e.g., apprehended tampering with witnesses or documents);

(ii) Where the continuance in office of the Government servant is likely to seriously subvert discipline in the office in which he is working;

(iii) Where the continuance in office of the Government servant will be against the wider public interest, e.g., if there is a public scandal and it is considered necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals, particularly corruption;

(iv) Where a preliminary enquiry into allegations has revealed a prima-facie case justifying criminal or departmental proceedings which are likely to lead to his conviction and/or dismissal, removal or compulsory retirement from service;

In the circumstances mentioned below, it may be considered desirable to suspend a Government servant for misdemeanors of the following types:

(i) an offence or conduct involving moral turpitude;

(ii) corruption, embezzlement or misappropriation of Government money, possession of disproportionate assets, misuse of official powers for personal gains;

(iii) serious negligence and dereliction of duty resulting in considerable loss to Government;

(iv) desertion of duty;

(v) refusal or deliberate failure to carry out written orders of superior officers.

In respect of the type of misdemeanor specified in sub clauses (iii), (iv) and (v), discretion should be exercised with care.

A Government servant may also be suspended by the competent authority in cases in which the appellate, revising or reviewing authority, while setting aside an order imposing the penalty of dismissal, removal or compulsory retirement directs that de novo enquiry should be held; or that steps from a particular stage in the proceedings should be taken again; and considers that the Government servant should be placed under suspension even if he was not suspended previously. The competent authority may, in such cases, suspend a Government servant even if the appellate or reviewing authority has not given any direction about the suspension of Government servant.

A Government servant against whom proceedings have been initiated on a criminal charge but who is not actually detained in custody (e.g. a person released on bail) may be placed under suspension by an order of the

competent authority under clause (a) of Rule 4 (2) of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999.

The Supreme Court in the case of Niranjan Singh and other vs. Prabhakar Rajaram Kharote and others (SLP No. 393 of 1980) have also made some observations about the need/desirability of placing a Government servant under suspension, against whom serious charges have been framed by a criminal court, unless exceptional circumstances suggesting a contrary course exist.

Therefore, as and when criminal charges are framed by a competent court against a Government servant, the disciplinary authority should consider and decide the desirability or otherwise of placing such a Government servant under suspension in accordance with the rules, if he is not already under suspension. If the Government servant is already under suspension or is placed under suspension, the competent authority should also review the case from time to time, in accordance with the instructions on the subject, and take a decision about the desirability of keeping him under suspension till the disposal of the case by the Court.

**Deemed Suspension**

Deemed suspension is a case when a Government Servant is considered to be under suspension without a conscious decision of any of the above mentioned authorities i.e. the rules create a legal fiction in which though no actual order is issued it is deemed to have been passed by operation of the legal fiction. Such a suspension is

deemed to have arisen consequent to the happening of certain events. Nevertheless an order is required to be passed by the competent authority. Such deemed suspension fall under two categories

i. during the service period and

ii. in respect of the period when the Government servant ceased to be in service

During the service period, a person is deemed to have been placed under suspension in the following cases:-

i) from the date of detention in custody (whether on criminal charge or otherwise) for a period exceeding 48 hours.

ii) from the date of conviction for an offence leading to imprisonment for a period exceeding 48 hours if he is not forthwith dismissed or removed or compulsorily retired consequent upon such conviction. (48 hours will be computed from the commencement of the imprisonment).

iii) Government servant to intimate his arrest/conviction. Although the Police Authorities will send prompt intimation of arrest and/or release on bail etc., of a Government servant to the latter's official superior as soon as possible after the arrest and/ or release indicating the circumstances of the arrest etc., but it is also the duty of the Government servant who may be arrested, or convicted, for any reason to intimate promptly the fact of his arrest/conviction and circumstances connected therewith to his official superior even though she/he might have been released on

bail. Failure to do so will render him liable to disciplinary action on this ground alone.

iv) order of dismissal, removal compulsory retirement set aside by on Appeal or Review. When a Govt. servant already under suspension is dismissed, removed or compulsorily retired but such punishment is set aside on appeal or review and further enquiry is ordered, the order of suspension will be deemed to continue in force from the date of the order of the punishment. Such order shall remain in force until further orders. It may be noted that this rule gets invoked only if the Government servant was at the time of removal, dismissal or compulsory retirement was already under suspension and not if she/he was not under suspension at the time of compulsory retirement, removal or dismissal as the case may be.

v) Court setting aside the order of compulsory retirement, removal, dismissal. A Govt. servant might have been dismissed or removed or compulsorily retired from service and a court of law might have set aside the penalty order or declared such order void. In such a case, if the disciplinary authority holds further enquiry into the case, then such Govt. servant is deemed to have been placed under suspension from the date of the original order of punishment. Such order will remain in force until further orders. Further enquiry is to be held only if the Court has set aside the order of penalty on technical grounds (without going into the merits of the case). Further enquiry into the charges which have not been

examined by the court can, however, be ordered depending on the facts and circumstances of the case.

There are two conditions which must be satisfied in order to attract the operation of Sub-rule (5) and (6) of Rule 4of The Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999. Firstly, the order of dismissal, removal or compulsory retirement must be set aside in consequence of a decision of a Court of Law. Secondly, the disciplinary authority must decide to hold a fresh enquiry on the allegations on which the order of dismissal, etc. was originally passed. (H. L. Mehra Vs. Union of India - AIR 1974 SC 1281).

Though suspension is not a punishment, it constitutes a great hardship for a Government servant. It also involves payment of subsistence allowance without the employee performing any useful service to the Government. In fairness to him/her, the period of suspension should be reduced to the barest minimum.

In cases of deemed suspension suspension will take effect automatically even without a formal order of suspension. However, it is desirable for purposes of administrative record to make a formal order

In all the cases the standard form may not fully meet the requirements of the particular case and hence the language of the order may have to suitably modified or adopting them to suit the requirement of the individual cases. For example, if at the time the Government Servant is being

placed under suspension, apart from a criminal offence which is under trial there is also certain other disciplinary case under contemplation, as well as criminal cases under investigation, which is also being taken into consideration for placing the Government Servant under suspension, the order of his suspension should indicate all the cases (criminal / departmental under investigation / trial/contemplation) on the basis of which it is considered necessary to place the Government servant under suspension so that in the event of the reinstatement, the outcome of all such cases can be taken into account, while regulating the period of suspension

In case where the Government servant is under suspension (whether in connection with any disciplinary proceeding or otherwise) and any other case is initiated against him and the competent authority considers it necessary that the Government servant should remain under suspension in connection with that case also, the competent authority should pass fresh orders on the Government servant's suspension with specific reference to all the cases against the Government servant so that in the event of reinstatement of the Government servant in one case the facts of other cases can also be taken into account while regulating the period of suspension.

**Date of Effect of order of suspension**

Except in case of 'deemed suspension' which may take effect from a retrospective date; an order

of suspension can take effect only from the date on which it is made. Ordinarily it is expected that the order will be communicated to the Government servant simultaneously.

Difficulty may, however, arise in giving effect to the order of suspension from the date on which it is made if the Government servant proposed to be placed under suspension:

a) is stationed at a place other than where the competent authority makes the order of suspension;

b) is on tour and it may not be possible to communicate the order of suspension;

c) is an officer holding charge of stores and /or cash, warehouses, seized goods, bonds etc.

d) A person on leave or who is absent unauthorisedly

In cases of types (a) and (b) above, it will not be feasible to give effect to an order of suspension from the date on which it is made owing to the fact that during the intervening period a Government servant may have performed certain functions lawfully exercisable by him or may have entered into contracts. The competent authority making the order of suspension should take the circumstances of each such case into consideration and may direct that the order of suspension will take effect from the date of its communication to the Government servant concerned.

In case of (c) it may not be possible for the government servant to be placed under suspension to hand over charge immediately without

checking and verification of stores/cash etc.

In such cases the competent authority should, taking the circumstances of each case into consideration, lay down that the checking and verification of stores and/or cash should commence on receipt of suspension order and should be completed by a specified date from which suspension should take effect after formal relinquishment of charge.

In case of (d) there should not be any difficulty in the order of suspension operating with immediate effect. It should not be necessary to recall a Government servant if he is on leave for the purpose of placing him under suspension. When a Government servant is placed under suspension while he is on leave, the unexpired portion of the leave should be cancelled by an order to that effect.

**Subsistence allowance under Suspension**

A Government servant placed under suspension or deemed suspension is not entitled to salary but is entitled to draw for the first three months subsistence allowance at an amount equal to leave salary during half pay or half average pay plus dearness allowance as admissible on such amount (i.e. pro-rata) but CCA and HRA as admissible to him before suspension. The matter is regulated by the provisions of Financial Handbook, Volume II, Part II to IV. . The order for subsistence allowance should be passed simultaneously with the order of suspension or as early as possible to avoid hardship to the concerned

Government servant.

Review of Subsistence Allowance: If the period of suspension exceeds 3 months, the amount of subsistence allowance may be increased or decreased upto a maximum of 50% of the amount being drawn by him during the first three months, depending on whether the reasons for continued suspension are attributable directly or indirectly to the Government servant. In view of the fact that any failure on the part of the competent authority to pass on order for an increase or decrease of the subsistence allowance, as soon as the suspended officer has been under suspension for three months, can either invoke unnecessary expenditure to Government, it should be ensured that action is initiated in all such cases and a decision is taken in sufficient time before the expiry of the first three months so that the requisite order could take effect as soon as the suspended officer has completed the first three months.

Under Financial Handbook, Volume II, Parts II to IV, it is obligatory to take such action before the expiry of the first three months.

**Speedy investigation into cases in which an officer is under suspension**

To avoid unduly long suspension, investigation into cases of officers under suspension should be given high priority and every effort should be made to file the charge sheet in the court of competent jurisdiction in cases of prosecution or serve the charge sheet on the

officers in cases of departmental proceedings within three months of the date of suspension and in cases in which it may not be possible to do so, the disciplinary authority should report the matter to the next higher authority explaining the reasons for delay.

If investigation is likely to take more time, it should be considered whether it is still necessary, taking the circumstances of the case into account, to keep the officer under suspension or should the order to be revoked and if so whether the officer could be permitted to resume duty on the same post or transferred to another post or office.

When an officer is suspended either at the request of the Central Bureau of Investigation or on the Department's own initiative in regard to a matter which is under investigation or enquiry by the CBI or which is proposed to be referred to CBI, a copy of the suspension order should be sent to the Director, CBI with an endorsement thereof to the Special Police Establishment Branch concerned. To reduce the time-lag between the placing of an officer under suspension and the reference of the case to the CBI for investigation such cases should be referred to the CBI promptly after suspension orders are passed if it is not possible to refer them before the passing of suspension orders.

Instructions contained in above paragraphs aim at reducing the time taken in investigation into cases of officers under suspension and speeding up the progress of cases at the investigation stage. They do not in any way abridge the inherent powers of the disciplinary authority

in regard to review of cases of government servants under suspension at any time either during investigation or thereafter. The disciplinary authority may review periodically the cases of suspension in which charge sheets have been serviced/filed to see:

a) Whether the period of suspension is prolonged for reasons directly attributable to the Government servant;

b) What steps could be taken to expedite the progress of court trial/departmental proceedings;

c) Whether the continued suspension of the officer is necessary having regard to the circumstances of the case at any particular stage; and

d) Whether having regard to the guidelines stated in paragraph 2 regarding the circumstances in which a Government servant may be placed under suspension, the suspension may be revoked and the Government servant concerned permitted to resume duty at the same station or at a different station.

In cases of suspension being revoked and the Government servant allowed to resume duty, an order regarding the pay and allowances to be paid for the period of suspension from duty and whether or not the said order shall be treated as a period spent on duty can be made only after the conclusion of the proceedings against him.

**Reasons for suspension to be communicated**

A government servant placed under suspension has a right of appeal

under Rule 11(i). This would imply that he/she should generally know the reasons leading to his/her suspension. In cases when a Government servant is suspended because a disciplinary case is pending or a case against him in respect of any criminal offence is under investigation, enquiry or trial, the order of suspension would itself mention the reasons and the Government servant would be aware of the reasons leading to his suspension.

Where a Government Servant is placed under suspension on the ground of "contemplated" disciplinary proceedings, the existing instructions provide that every effort would be made to finalise the charges within three months of the date of suspension. If these instructions are strictly adhered to, a Government servant who is placed under suspension would become aware of the reasons for his suspension without much loss of time. In some cases where it may not be possible for some reason or the other to issue the charge sheet within three months, reasons for suspension should be communicated to the Government servant concerned immediately on the expiry of the aforesaid time-limit prescribed for the issue of charge sheet, so that he may be in position to effectively exercise the right of appeal available to him under Rule 11(1) if he/she so desires. Where the reasons for suspension are communicated on the expiry of a time-limit prescribed for the issue of a charge sheet, the time limit of 90 days for submission of appeal should be counted from the date on which the reasons for

suspension are communicated.

The above procedure will not, however, apply to cases where a Government servant is placed under suspension on the ground that he has engaged himself in activities prejudicial to the interest of the security of the State.

**Regularisation of the period of suspension:**

Provisions relating to regularization of the period of suspension are:

(a) When the proceedings do not lead to imposition of any penalty, the entire period of suspension will be treated as duty and the Government Servant will be entitled for full pay and allowances for the above period.

(b) Same will be the position, when at the end of the proceedings, only minor penalty is imposed.

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

(d) Otherwise, the authority ordering suspension will have to take a view as to whether the suspension was wholly unjustified and decide the issue depending upon the facts and circumstances of the case.

Where the Government servant who was under suspension is fully exonerated in a Departmental proceeding or acquitted by the Court in a Criminal trial, the period of suspension is treated as wholly unjustified. The period is treated as

duty for all purposes and he is paid full pay and allowances for the period of suspension less the subsistence allowance already drawn by him.

Where a major penalty is imposed on the Government servant, the period of suspension will be regularised by the competent authority after giving a show cause notice to the Govt. servant and allowing him a maximum time of 60 days to represent. The period of suspension will be regularised as ordered by the competent authority. The Govt. servant shall not be entitled to full pay and allowances for the period. He can be paid any amount less than 100% of his pay but it will not be less than the amount already drawn by him as subsistence allowance.

Financial Handbook, Volume II, Part II to IV provides that the period of suspension may also be treated as leave due and admissible at the request of the Government servant. In such a case if the leave salary admissible works out to be less than the amount already paid as subsistence allowance than the excess amount shall have to be recovered.

**Administrative effects of suspension**

(i) Grant of advance for purchase of conveyance shall not be granted to a Govt. servant under suspension.

(ii) Grant of House Building Advance is admissible.

(iii)Entry card/Identity card should be withdrawn, if issued for entry in the office.

(iv)If death occurs during suspension, the period of suspension will be treated as duty and family will get full pay and allowances for the period less subsistence allowance already drawn.

(v) Leave :- leave may not be granted to a Government servant under suspension.

(vi)LTC :- Since no leave can be granted to a Government. servant under suspension, he cannot avail of LTC for himself. There is, however, no bar to the members of his family availing of LTC.

(vii) Lien :- A Government servant under suspension retains his lien during suspension period.

(viii) A suspended Government servant should not be asked to mark attendance.

(ix)Headquarters of a Government servant under suspension:- The headquarters of a Government servant under suspension should normally be assumed to be his last place of duty. However, where an individual under suspension requests for a change of headquarters, the competent authority may change the headquarter if it is satisfied that such a course of action will not put the Government to any expenditure like grant of T. A. etc. or create difficulty in investigations or in processing the departmental proceedings etc..

(x) Resignation during suspension:- When a Government servant under suspension submits resignation, the competent authority will consider whether it

would be in public interest to accept the resignation. Normally, it would not be accepted except where allegations do not involve moral turpitude or where evidence is not sufficient to prove the charges leading to removal/dismissal or where proceedings are likely to be protracted and it would be cheaper to the exchequer to accept the resignation. In the case of Group C & D employees' prior approval of Head of the Department will be necessary. Approval of Governor would be needed in the case of Group A & B employees.

(xi) Retirement on superannuation:- On attaining the age of superannuation, a Government servant will be retired even if he is placed under suspension. He will not get subsistence allowance but will draw provisional pension under Financial Handbook, Volume II, Part II to IV.

(xii) Writing of ACRs by an officer under suspension.

An officer under suspension can write/review ACRs of his subordinate within two months from the date of his/her suspension or within one month from the date on which the report was due. But no officer under suspension can write/review ACRs of his subordinates if during major part of writing/review he is under suspension. It is because she shall not have full opportunity to supervise the work of his subordinates.

# MINOR & MAJOR PENALTY

**What are distinguishing features between Major and Minor Penalties?**

The distinction between Major and Minor penalties may be perceived from three angles viz. what, who and how. Firstly, minor penalties are lighter penalties whereas major penalties are heavier penalties. It is noteworthy that recovery from pay of loss caused was the only penalty wherein the delinquent had to lose money. Otherwise, none of the minor penalties had the effect of taking away any benefit enjoyed by the delinquent. On the contrary, the major penalties result in deprivation of the benefits/position enjoyed by the delinquent such as loss of employment, etc. Secondly, major penalties could be imposed only by the Appointing Authority whereas authorities subordinate to the Appointing Authority have been designated to impose minor penalties. Thirdly, major penalties can be imposed only after conducting a detailed oral hearing as provided for under Rule 7 of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999, unless conduct of Enquiry has been dispensed with under any of the provisions under the second proviso to Article 311 (2) which has been reproduced in Rule 15 of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999. Against this, ordinarily, under normal circumstances, minor penalty can be imposed after issue

of memorandum and perusal of the response of the delinquent.

**What are the extra-ordinary circumstances when even for imposition of minor penalty, a detailed oral hearing is to be conducted?**

The circumstances when detailed oral hearing is held for imposition of minor penalty fall under two broad categories viz. optional and obligatory. (a) Rule 10 of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 provide that even for imposing a minor penalty, submission of explanation within a reasonable time shall be considered in every case in which the Disciplinary authority is of the opinion that it is necessary. Disciplinary authority's decision to conduct detailed oral hearing may be either suo mottu or based on the request of the delinquent. Generally, where either of the parties may rely on oral evidence, it would be necessary to conduct oral hearing. If the evidence is purely documentary in nature, there may not be any need for conducting detailed oral hearing unless the case is covered by the provisions relating to obligatory conditions as explained hereunder.

(c) As per sub Rule 7 of the Rules it is mandatory considering the representation of the delinquent employee if:

(i) it is proposed to impose the penalty of withholding of increments of pay and the same is likely to affect the amount of pension payable to the delinquent employee; or

(ii) it is proposed to impose the penalty of withholding of increments of pay for a period exceeding three years; or

(iii)it is proposed to impose the penalty of withholding of increments of pay with cumulative effect for any period.

**What is the advantage of taking recourse to minor penalty proceedings?**

Minor penalty proceedings can be concluded with minimum loss of time. In most of the cases, final order in minor penalty proceedings could be passed in less than four weeks of framing of charges, unless consultation with Commision is necessary. As rightly observed by the Hota Committee, "a minor penalty swiftly but judiciously imposed by a Disciplinary Authority is much more effective than a major penalty imposed after years spent on a protracted Enquiry."

**What is the procedure for imposing minor penalty?**

The following are the steps involved in imposition of minor penalty:

(a) A memorandum is issued together with a statement of imputations of misconduct or misbehavior.

(b) Any documentary evidence in support of the charge may have to be annexed to the charge memorandum or made available to the delinquent official.

(c) The delinquent official may be allowed time up to 10 days for submitting reply.

(d) Any request for extension of time may be considered objectively subject to conditions of reasonableness

(e) Any request for inspection of records or copies of documents may be allowed if its denial will amount to denial of reasonable opportunity

(f) On examination of the reply of the charged officer, or on expiry of the time allowed for submitting reply, a reasoned order may be passed.

**Can minor penalty be imposed on conclusion of proceedings for imposition of a major penalty?**

There is no objection to impose minor penalty on conclusion of the proceedings under Rule 7 of Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 for imposition of major penalty, if the disciplinary authority feels that minor penalty is adequate to meet the ends of justice.

**Can an authority competent to impose major penalty initiate and conduct minor penalty proceedings?**

There is no embargo for a higher disciplinary authority to initiate and conduct minor penalty proceedings. However, such circumstances should not lead to raising of eyebrows.

If the authority competent to impose major penalty had initiated and conducted major penalty proceedings, can such authority impose minor penalty or it will have to direct the lower disciplinary authority to impose minor penalty.

Provided that where a disciplinary proceedings for imposition of major penalty has been initiated by a higher disciplinary authority, final orders should also be passed by such authority only and the case should not be remitted to the lower disciplinary authority. As a natural corollary, appeal should be dealt with by the next higher authority.

# DRAFTING AND ISSUE OF CHARGE SHEET

**What is a charge?**

A charge may be described as the prima-facie proven essence of an allegation setting out the nature of the accusation in general terms, such as, negligence in the performance of official duties, inefficiency, acceptance of sub-standard work, false measurement of work executed, execution of work below specification, breach of a conduct rule, etc. a charge should briefly, clearly and precisely identify the misconduct/misbehavior. It should also give time, place and persons or things involved so that the public servant concerned has clear notice of his involvement. A charge is essentially an omission or a commission. It articulates that the charged official has committed something which should not have been done or has failed to do something which he ought to have done.

**What is the significance of issue of charge sheet?**

Issue of charge sheet is the discharge of the Constitutional obligation cast by Article 311(2) which states "No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity…' It is also the compliance of the principle of

natural justice which states – "No one can be condemned unheard" which has been codified in the constitutional provisions under Article 311(2).

**Who is to decide about the issue of charge sheet?**

Disciplinary Authority, who takes cognizance of the misconduct, is the appropriate authority to decide as to whether formal disciplinary proceedings are to be initiated against the government servant or warning or counseling is to be administered. In cases where a preliminary investigation has been conducted, the disciplinary authority may take a decision based on the preliminary investigation report.

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

Yes. Rule 7 of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 provides that an authority who is competent only to impose minor penalties can institute proceedings for imposition of major penalties also.

Provided that if at the end of the proceedings, the above authority reaches the conclusion that imposition of minor penalty will make the ends of justice meet, such authority may impose the penalty without referring the case to the higher authority who is competent to impose major penalty. Needless to add that if at the end of the proceedings, it is felt that major penalty is to be imposed, the case will be submitted to the authority who is competent to impose major

penalty.

**Can proceedings under the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 be initiated when a criminal case is in progress?**

There is no hard and fast rule in this regard. Every case needs to be decided on its own merits. If the criminal case is about a misconduct relating to employment such as acceptance of illegal gratification, corruption, etc. there might not be any bar on initiating departmental proceedings pending criminal prosecution. When the criminal case is complex in nature and involves questions of fact and law, it may not be capable of being handled departmentally. However, there is no bar on simultaneous departmental proceedings. Normally the employee concerned would object to the departmental proceedings on the plea that by participating in the departmental proceedings, the delinquent would be compelled to disclose his/her defence in advance and the same would seriously prejudice defence in the criminal case. Consequences of staying the departmental proceedings are too well known to need any recapitulation. The reason cited by the delinquent cannot be accepted as a blanket sanction for stay of departmental proceedings as stated in State of Rajasthan v.

B.K. Meena and Ors. [(1997)ILLJ746SC] in the following terms: "The only ground suggested in the decisions of the Supreme Court as constituting a valid ground for staying the disciplinary proceedings is that "the defence of the employee in the

criminal case may not be prejudiced". This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. It means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', desirability', or propriety, as the case may be, of staying the departmental enquiry has to be determined in each case taking into consideration all the facts and circumstances of the case. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the Supreme Court's decisions." As pointed out in Kendriya Vidyalaya Sangathan and Ors. Vs. T. Srinivas [JT2004(6) SC 292, (2004)7SCC442], the general rule is that parallel proceedings are permissible:

" A reading of M. Paul Anthony's case (supra) it is noted that there is consensus of judicial opinion on the basic principle that proceedings in a criminal case and departmental proceedings can go on simultaneously, however this court noticed that certain exceptions have been carved out to the said basic principle."

If however, the employee obtains a stay order from the court against parallel proceedings, departmental proceedings must be stayed forthwith and legal advice sought regarding the possibility of getting the stay vacated.

**What are the four Annexures to the charge sheet?**

Annexure – I : Articles of Charge

Annexure – II : Statement of imputations of misconduct or misbehavior

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

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

**How many charges may be included in a single charge sheet?**

There is no limit about the number of charges in a charge sheet. It must however be ensured that a charge should relate to a single transaction. For example, if an employee has committed fraud in three Money orders, these may be shown as three distinct charges. The reasons are not far to seek. Each instance of misconduct is independent of the rest and each instance will depend on distinct evidence. Showing them as distinct charges will facilitate the proof of each charge irrespective of the outcome in respect of other charges.

**When an enquiry is underway, would it be proper to issue another charge sheet against the same employee in respect of some other misconduct(s), without withdrawing the earlier charge sheet?**

This question was addressed by the Hon'ble Supreme Court in Indian Drugs and Pharmaceuticals Ltd. and Anr. Vs. R.K. Shewaramani. [JT 2005 (6), (2005)6 SCC76]

In this case, a charge sheet was

issued on 27.9.1989, alleging that the respondentemployee had not joined the transferred post. There was another set of charges and a second charge sheet in respect of these charges was issued on 12.12.1989. While these two charges were pending consideration in departmental proceedings, action in terms of Rule 30A of the Industrial Drugs and Pharmaceutical Ltd. Conduct Discipline and Appeal Rules, 1978 (in short the 'Rules') was taken. A show-cause notice was issued requiring the respondent to show cause as to why his services shall not be terminated on account of unauthorized absence from duty exceeding 30 days. While allowing the appeal of the employer, Hon'ble Supreme Court held as under:

"There is no requirement in law that for continuing with fresh proceedings the charge sheet issued must indicate that the previous proceedings pending have been given a go by. The employer is free to proceed in as many departmental proceedings as it considers desirable. Even in a hypothetical case in two of the departmental proceedings the finding is in favour of the delinquent employee, yet in another departmental proceeding finding adverse to the delinquent officer can be recorded. Merely because the two proceedings were pending, that did not in any way stand on the way of the employer to initiate another departmental proceeding and that too on the basis of an amended provision which came into effect after initiation of the previous departmental proceeding."

**Can more than one charge sheet be issued to the same employee in respect of the same misconduct? or Can a charge sheet be issued in respect of a misconduct for which an enquiry was held in the past and it was decided to drop the charges?**

Facts in Mukesh Ali Vs.State of Assam and Anr.[ JT2006(6)SC111, (2006)5SCC485, [2006]Supp(3)SCR228] were

that a charge sheet was served on the Appellant on 29.7.1997. The Enquiry Officer, after concluding the enquiry, submitted his Report along with enclosures wherein it was found that the appellant was not guilty of the alleged offence. The report was submitted on 25.4.2000. On 1.11.2000, proceedings against the appellant were dropped with order directing that the suspension period of the appellant from 16.9.1994 to 12.12.1994 be treated as on duty. Administrative authorities issued a show cause notice to the appellant on 20.10.2010, for reopening the earlier proceedings, purportedly based on a direction dated 12.5.2001, of the Hon'ble Supreme Court. Clarifying that its directions dated 12.5.2001 was prospective in nature and did not cover the case of the appellant, the Hon'ble Supreme Court held:

" ..... Hence, in our view, the learned single Judge and the learned Judges of the Division Bench completely misinterpreted and misread paragraphs 27 and 12 of the orders dated 15.1.1998 and 12.5.2001 respectively passed in W.P.(C) No. 202 of 1995 in coming to the conclusion that the case of the

appellant was covered by the aforesaid two orders of this Court. The findings of the High Court, if followed, would create a chaos as it would mean that by virtue of the aforesaid orders passed by this Court all departmental proceedings concluded in the past would become liable to be opened as that would never have been intended by this Court. This Court also did not intend to give retrospective operation of the two orders passed by it referred to in paragraphs supra and, therefore, the adequacy of the action taken cannot be a reason for reopening the concluded issue. This Court's directions were not intended to allow the State Government to reopen all or any proceeding which was logically concluded by accepting the enquiry report in which the State-respondents gave warning just cautioning to be careful in future as no direct guilt or wrong was attributed to the appellant by the enquiry officer. Hence, in our view, the order dated 1.11.2000 dropping the proceedings by the Government cannot be termed as letting the appellant off for any reason or any account of any laxity or lapse in the enquiry proceedings."

**What is the base material in preparing the Charge sheet?**

Normally, the drafting of charge sheet is taken up based on the preliminary investigation report. Bulk of the material forming part of Annexure – II of the Charge Sheet can be taken from the Preliminary Investigation Report.

**What is the 'Charge – Fact – Evidence' co-relation?**

A Charge emerges from a set of facts and the facts rest on evidence. For example, the charge of submission of a false LTC Claim, may emerge from the following facts:

i. The employee applied for leave

ii. There was a mention in the leave application about the intention of availing LTC for self and family'

iii. There was a request for grant of advance

iv. Advance amounting to xxx was granted to the employee

v. The employee availed leave

vi. The employee on joining after leave, submitted a LTC Claim

vii. That on verification of ticket from the Railway it was revealed that the ticket having PNR number mentioned by the employee in the claim was cancelled a few days before the journey.

The above facts will rest on the following evidence:

(a) Leave application wherein the employee had mentioned his intention to avail LTC

(b) Application for sanction of advance

(c) Order sanctioning LTC Advance

(d) Evidence in support of the fact that advance was availed by the employee

(e) Claim made by the employee containing the disputed PNR number

(f) Intimation from the railway authorities to the effect that the ticket having the disputed PNR number was cancelled a few days before the journey.

The above relation may be schematically presented as under:

**How the Articles of Charge are framed?**

For deciding the articles of charge, one must go through the preliminary investigation report and list all the charges that come to his/her mind in the relevant case – such as theft, negligence, non-compliance of departmental instructions, failure to safeguard government property, facilitating theft, etc. Then all those charges must be arranged in the ascending or descending order of seriousness. This must be based on common sense. For example, common sense would tell as that theft, embezzlement is more serious charges than negligence and non-compliance of instructions. After arranging the likely charges in the order of seriousness, one should ask against the most serious charge, "

Do we have evidence to establish this charge?"

If the answer is negative, move down to the next most serious charges. Similarly, if one starts with the least serious charge, ask the question.

"Is it simply this only or something more serious?"

If the answer is in the affirmative, move upward to the more serious charge. Through this process of elimination, one may arrive at the

appropriate charge.

**How to make Annexure III and IV?**

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

At each step ask the question, "Is it required to be proved?"

If the answer is yes, ask the question "Where is the evidence in support of this?"

The evidence might be a part of the preliminary investigation document. If so, the same must be incorporated in the relevant Annexure. Else, efforts must be made to collect it and include in the Annexure. After completion of Annexure – III, each item therein must be considered from the angle as to how the document is to be introduced, if the same is disputed by the charged official.

Oral witnesses who could introduce the documents should be added in Annexure – IV in addition to those who were already included for establishing facts. [What is a disputed document and how to handle such situation are dealt with in the chapter Conduct of Enquiry]

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

While preparing the charge sheet, it must be ensured that only those documents are referred to and relied upon therein, so that all the listed documents could be made available. Further the availability of all the listed documents must be ensured. In this connection, it is

relevant that the Hon'ble Supreme Court had observed in State of Uttar Pradesh & ORS. Vs Saroj Kumar Sinha [(2010) 2 SCC 772] dismissed the appeal by the State holding as under:

" The proposition of law that a government employee facing a department enquiry is entitled to all the relevant statement, documents and other materials to enable him to have a reasonable opportunity to defend himself in the department enquiry against the charges is too well established to need any further reiteration." XXX

Taking into consideration the facts and circumstances of this case we have no hesitation in coming to the conclusion that the respondent had been denied a reasonable opportunity to defend himself the enquiry. We, therefore, have no reason to interfere with the judgment of the High Court."

Another important precaution to be undertaken before finalization of charge sheet is that one must go through it carefully following the "Devil's Advocate approach" i.e.

purely with the idea of finding faults in the charge sheet. The faults may range from simple clerical inaccuracies, through logical fallacies to utter absurdities. One basic question of prime concern at this stage is: How the charged officer will exploit this? Needless to add, any fault noticed must be rectified.

**What is a vague charge?**

Any charge which is deficient in the details relating to the misconduct

may be described as a vague charge. Such a charge shall have the effect of vitiating the proceedings. Dismissing the appeal with cost, the Hon'ble Supreme Court had held as under in State of Uttar Pradesh vs. Mohd. Sherif, 1982(2) SLR SC 265: AIR 1982 SC 937:

"After hearing counsel appearing for the State, we are satisfied that both the appeal Court and the High Court were right in holding that the plaintiff had no reasonable opportunity of defending himself against the charges levelled against him and he was prejudiced in the mattes of his defence.

Only two aspects need be mentioned in this connection. Admittedly, in the chargesheet that was framed and served upon the plaintiff no particulars with regard to the date and time of his alleged misconduct of having entered Government Forest situated in P.C. Thatia District Farrukhabad and hunting a bull in that forest and thereby having injured the feeling of one community by taking advantage of his service and rank, were not mentioned. Not only were these particulars with regard to date and time of the incident not given but even the location of the incident in the vast forest was not indicated with sufficient particularity. In the absence of these plaintiffs was obviously prejudiced in the matter of his defence at the enquiry. Secondly, it was not disputed before us that a preliminary enquiry had preceded the disciplinary enquiry and during the preliminary enquiry statements of witnesses were recorded but copies of these statements were not furnished to him at the time of the disciplinary

enquiry. Even the request of the plaintiff to inspect the file pertaining to preliminary enquiry was also rejected. In the face of these facts which are not disputed it seems to us very clear that both the first appeal Court and the High Court were right in coming to the conclusion that the plaintiff was denied reasonable- opportunity to defend himself at the disciplinary enquiry; it cannot be gainsaid that in the absence of necessary particulars and statements of witnesses he was prejudiced in the matter of his defence.

In the recent case of Anil Gilurker Vs. Bilaspur Raipur Kshetria Gramin Bank and Anr. [JT2011(10)SC373] Decided On: 15.09.2011 the Hon'ble Supreme Court observed as under:

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

**Is it necessary to quote the rules**

**in all the articles of charge?**

Not necessarily; where a definite rule has been flouted, it may be quoted without fail. If however, the employee is proceeded against for a behavior contrary to accepted practice and procedure the same may be construed as violation of Rule 3 of the Conduct rules and mentioned accordingly.

**What is the time limit for issue of charge sheet?**

Time limit prescribed for issue of charge sheet as is one month from the date of receipt of Commissions advice and two months from the date of receipt of investigation report.

**Is there any time limit between the occurrence of the misconduct and the issue of charge sheet?**

There is no time limit between the commission of misconduct and the issue of charge sheet in respect of serving employees. However, Unexplained in-ordinate delays may have the effect of vitiating the enquiry. Hon'ble Supreme Court struck down the proceedings, in the case of P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board [JT2005(7)SC417, [2005]Supp(2) SCR474, 2006(1)SLJ67] relating to the issue of a Charge Sheet in 2000 in respect of the alleged misconduct committed in 1990, " Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause

unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefits shall be disbursed within three months from this date. No costs."

**What is the effect of delay on the validity of the proceedings?**

Delay may be of two types – delay in issue of charge sheet and secondly, delay in the conduct of proceedings. Hon'ble Central Administrative Tribunal (Principal Bench) in its decision dated 23.4.2010, in Ashish Abrol, Joint Commissioner of Income Tax Vs. Union of India (UOI) through The Secretary, Ministry of Finance,

Department of Revenue and Director General of Income Tax (Vigilance) [MANU/CA/0171/2010] analysed a number of decisions on the subject and clarified the position in the following paragraph:

The sum and substance of the judgments is that:

the competent authority should be able to give an explanation for the inordinate delay in issuing the Memorandum of Charge; the charges should be of such serious nature, the investigation of which would take a long time and would have to be pursued secretly; the nature of charges would be such as to take a long time to detect such as embezzlement and fabrication of false records; if the alleged misconduct is grave and a large number of documents and statement of witnesses had to be looked into, delay can be considered to be valid; the Court has to consider the nature of charge, its complexity and on what account the delay has occurred; how long a delay is too long always depends on the facts of the given case; if the delay is likely to cause prejudice to the Charged Officer in defending himself, the enquiry has to be interdicted; and the Court should weigh the factors appearing for and against the disciplinary proceedings and take a decision on the totality of circumstances. In other words, the Court has to indulge in the process of balancing.

**How the charge sheet is to be issued?**

As seen above, issue of charge sheet is the discharge of the constitutional obligation – to inform the employee

of the charges. The charge sheet therefore needs to be served on the employee. It may either be served in person or sent to the supervisory officer of the employee concerned for service or sent by registered post. Hon'ble Supreme Court in Delhi Development Authority vs H.C. Khurana [1993 AIR 1488, 1993 SCR (2)1033] has interpreted the term 'issue of charge sheet' in the following manner in the context of the applicability of the sealed cover procedure: :

"The issue of a chargesheet, therefore, means its despatch to the government servant, and this act is complete the moment steps are taken for the purpose, by framing the chargesheet and despatching it to the government servant, the further fact of its actual service on the government servant not being a necessary part of its requirement. This is the sense in which the word 'issue' was used in the expression 'chargesheet has already been issued to the employee', in para 17 of the decision in Jankiraman." However, in the case of Union of India Vs. Dinanath Shataram Karekar & Ors, [1998 SCC (L&S) 1837], the Hon'ble Supreme Court vide its judgment dated 30/07/1998 had held that charge sheet dispatched by registered post and received back with the postal endorsement "not found" does not amount to issue of charge sheet and set aside the order dated 19 Aug 1985 holding, . "It has already been found that neither the charge-sheet nor the show-cause notices were ever served upon the original respondent, Dinanath Shantaram Karekar. Consequently, the entire proceedings were vitiated."

Can the charge sheet be amended in the course of Enquiry? Yes.

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

In the case of M.G. Aggarwal Vs. Municipal Corporation Of Delhi decided on 10 July, 1987 [32 (1987) DLT 394] it was held as under:

It is obvious that the effect of the corrigendum would be to make out a new charge against the petitioner. However, the earlier enquiry was not terminated and new enquiry was not commenced against the petitioner. The corrigendum substantially altered the charge against the petitioner. No new enquiry was held. Mr. S.P. Jain witness was re-called in the continued enquiry on 3/04/1986, and he further gave evidence which supported the corrigendum. The enquiry ultimately resulted in the aforesaid order of dismissal dated 24/07/1986. which was confirmed by an order dated 18/11/1986. The result of this enquiry cannot obviously be sustained. When the charge has been substantially altered, it has to be tried de novo. The enquiry held and continued on the basis of the charge-sheet dated 31/01/1985 and continued by incorporating the distinct charge, the subject-matter of The corrigendum dated 4/03/1986, is no enquiry at all as the petitioner has been denied an opportunity to meet the amended charge, as amended by The corrigendum. He has not been permitted to file reply to the amended charge. This being the case, the petitioner not having been given the opportunity to defend himself, the entire enquiry

proceedings are bad in law, and the order of termination dated 24/07/1986 as well as the appellate order dated 1 8/11/1986 have to be quashed.

**How to issue the charge sheet, if the delinquent employee is not traceable and the charge sheet issued through registered post is returned by postal authorities with the endorsement not found'?**

When the delinquent employee is unauthorizedly absent and could not be contacted, copies of the charge sheet may be dispatched to all the known addresses of the delinquent official, available with the organization. If it fails, charge sheet or the gist thereof may be published in the local news paper; the charge sheet may be published in the web site of the organization and pasted in the notice board of the organization.

# APPOINTMENT OF INQUIRING AUTHORITY AND PRESENTING OFFICER

Who appoints Inquiring Authority and Presenting Officer (PO)? IO is appointed by the Disciplinary Authority under rule 7(i) and PO under rule 7(xi) of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 respectively.

**Is it always necessary to appoint an IO and PO?**

An alternative to appointment of IO is the disciplinary authority itself performing the duties assigned to IO in the rules. However, there is no such alternative for the PO. There may be certain organizations falling outside the purview of the Rules where there is no scheme for appointment of PO.

**Who can be appointed as IO?**

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

**When are the IO and PO appointed?**

IO and PO are to be appointed if there is a need to inquire into the charges. The need will emerge only when the Charged Officer denies the charges or does not respond to the charge sheet. Thus the

appointment of IO/ PO will arise only after the charge sheet is issued and the charged officer either does not respond to it or denies the charge without convincing the Disciplinary Authority.

**What is the remuneration payable to the IO and PO?**

Honorarium, Transport Allowance and Secretarial Assistance charges have been laid down in Financial Handbook subject to certain conditions.

# FUNCTIONS OF ENQUIRY OFFICER

**What is the basic responsibility of the Enquiry Officer?**

As stated in Rule 7 the basic purpose of appointment of Enquiry Officer is to inquire into the truth of the imputations of misconduct or misbehavior against a Government Servant.

**What are the various activities performed by the Enquiry Officer for the discharge of the above function?**

Various activities to be performed by the Enquiry Officer may broadly be classified as under:

a) Pre hearing stage

b) Preliminary hearing stage

c) Regular hearing stage

d) Post hearing stage

e) At any stage during the Enquiry

f) Tackling some unusual circumstances which may arise The details of the activities are explained under different questions in separate paragraphs hereunder

**What are the activities to be performed by the IO during the pre- hearing stage?**

i. Verifying the appointment order and the enclosed documents

ii. Acknowledging the appointment.

iii. Preparation of the Daily Order

Sheet –This will be done throughout the Enquiry

iv. Analysing and understanding the Chargesv.

v. Fixing the date for Preliminary Hearing

vi. Sending communication to the parties about hearing.

vii. Informing the controlling officers of Charged Officer and Presenting Officer

viii. Ascertaining as to whether the Charged Officer has finalised a Defence Assistant and if so informing the Controlling Officer of the Defence Assistant.

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

It is desirable that the IO scrutinizes the order appointing him as IO and the enclosed documents thoroughly. Firstly, the appointment of Enquiry Officer is required to be made by the Disciplinary Authority and no one else. When the Governor is the Disciplinary Authority, the order of appointment of the I O may be signed by any authority that is competent to sign communications on behalf of the Governor. At any rate the Order should indicate that the appointment of IO is being made by the Governor only. Any deviation in this regard will constitute an incurable defect in the Enquiry. The complete proceedings will be liable to be quashed if the IO had been appointed by someone other than the Disciplinary Authority. Similarly, there may be situation wherein the charged

officer, while denying the charges, might have quoted a reference number different from the one mentioned in the charge sheet. It is desirable to resolve such discrepancies at the initial stage before it becomes too late.

**Can the IO take initiative for removing the deficiencies in the Charge Sheet?**

IO has full liberty to bring to the notice of the Disciplinary authority any discrepancy which is of the nature of clerical or typographic mistake, i.e. patent errors which are apparent in the face of the record. In case there is any patent defect in the Charge Sheet, the IO may bring it to the notice of the Disciplinary Authority well in time so that the defect can be cured. In this context it is essential that IO should not take upon himself the role of refinement or reinforcement of the Charge Sheet. He should confine himself only to the patent errors in the Charge Sheet and not try to make qualitative improvement in it.

Any initiative by the IO for the fortification of the charge sheet by way of including additional evidence is most likely to provide material for challenge on grounds of bias as the action of the IO is liable to be perceived as that of a prosecutor. An illustrative list of patent errors is as under: (a) Typographic mistakes (b) Quoting wrong Rule Numbers. E.g.

(a) The acquisition of this immovable property was not reported to the competent authority as required under Rule

(b) Incompatibility between the name of the Rule and its yea.

(c) Incompatibility between the same figures mentioned in different parts of the Charge Sheet.

(d) Names of persons or places mis-spelt in the Charge Sheet

e.g. "... acquired a house at Illahabad at a cost of Rs. 13,00,000/="

(e) Inconsistency between the numeric and verbal description of an amount e.g. " Rs. 7,348/= (Rupees Three Thousand seven Hundred and forty eight) "

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

Illustrative list of errors which IO should not try to rectify is as under:

(a) Any logical inaccuracies

(b) Insufficiency of evidence

(c) Vagueness of charge

(d) Ambiguity in charge

(e) Lack of coherence between the misconduct and the charge.

E.g.Unauthorised absence is shown as lack of absolute integrity, while it would have been better described as lack of devotion to duty.

**Is it necessary for the IO to acknowledge the appointment order?**

It is a good practice for the IO to acknowledge his appointment. This will keep the Disciplinary Authority informed that the IO has taken charge of the matters and is proceeding with the task. In case the IO is not able to take up the appointment, on account of any

valid reason, it is all the more important that the Disciplinary Authority is informed well in time. While a person is not expected to turn down the appointment as IO due to personal reasons, there may be circumstances wherein the IO may have to decline to act so in the interest of the case or due to organisational reasons. Such occasions should be extremely rare. But when such circumstances arise, the IO should inform the Disciplinary Authority without any delay with complete reasons

**What is Daily Order Sheet (DOS)?**

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

(a) Serial No of the order

(b) Date

(c) Parties present

(d) What happened [eg.: State Witness No. 3 and 4 examined, cross examined and re-examined. At the conclusion of hearing, Charged Officer intimated that he may not be able to attend hearing for two weeks because he had received message from his native place stating that his mother is not well. He accordingly requested that the next hearing may be held after two weeks. Request has been agreed to. Date of Next Hearing will be intimated to the parties after two weeks]

(e) Signature of the parties

concerned

**What is the importance of DOS?**

It needs to be appreciated that Daily Order Sheet will be the most authentic record for ascertaining as to what happened in the course of enquiry because it is signed by all present. Inquiring Authority should therefore pay adequate care to the accurate recording of DOS. All the opportunities granted to the PO needs to be recorded without fail because these will help in countering the allegation, if any, of inadequate opportunity raised by the Charged Officer at the later stage.

**Are copies of the DOS supplied to all the parties concerned?**

Copy of DOS must be given to the parties present and signing it. While conducting ex-parte proceedings, it would be a good practice to dispatch the copies of the DOS to the delinquent official. This action will manifest the bonafide of the authorities, in case the delinquent official alleges denial of reasonable opportunity, bias, malafide, etc.

**When is the Daily Order sheet to be prepared?**

Daily Order Sheets are to be prepared whenever there is a progress in the case – not only when hearing takes place. Thus the first Daily order sheet may be made on the day when IO received his/her appointment order. It may read as under: Daily Order Sheet No. 1 Dated 99. Aaa.9999 Parties present: None Received Order No. ….. dated ….. from ….. appointing me as the Enquiry Authority to look into charges framed against …..

vide Memorandum No. …… dated …… The following papers were also received along with the Charge Sheet:

(a) Copy of the charge sheet

(b) Copy of the written statement of defence (c) Copy of order No. …. dated …. appointing Shri …. as Presenting Officer in the case. An acknowledgement was sent to the Disciplinary Authority. Sd/- Name Designation.

**How does the IO analyse and understand the charge?**

IO has to perceive the charge sheet based on the Charge – Fact – Evidence corelation. This will help in analyzing and appreciating evidence. This will help the IO to proceed with the task with clarity right from the initial stage.

**What are the precautions to be taken by the IO during the pre-hearing stage?**

The date for the preliminary hearing must be chosen in such a way as to provide reasonable opportunity to the parties concerned. For example if the parties are posted outstation, date of hearing must be fixed so that there is adequate time for the communication to reach the parties and adequate time for the parties for undertaking the travel and reaching the venue.

**What is preliminary hearing stage?**

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

**Under what circumstances, the IO may stay the proceedings?**

IO cannot stay the proceedings except under one of the under mentioned two circumstances:

(a) When there is a stay order from the court of competent jurisdiction

(b) When the Charged Officer has expressed lack of faith in the IO.

**What course of action is open to the IO when the Charged Officer presents an order from the Court staying the proceedings?**

Under the above stated situation, the Disciplinary Authority must be promptly informed of the development, to enable the Disciplinary Authority to seek legal advice regarding scope of the order and to explore the possibility of filing appeal against the stay order. IO should not proceed with the enquiry unless the stay order is vacated by the court or the Disciplinary Authority informs, based on legal advice that the stay order does not apply to the case in question.

**What course of action is open to the IO when the Charged Officer (CO) expresses lack of confidence on the IO?**

As stated above, the IO shall stay the proceedings forthwith and inform the CO that he is at liberty to seek a change of IO as per Rules. IO should also inform the CO that the proceedings cannot be stayed indefinitely to facilitate the CO making application for change of IO and that the CO must submit the application within a prescribed time (say one week) and submit proof thereof; else the IO is at liberty to

proceed with the enquiry. Simultaneously, the IO should apprise the Disciplinary Authority about the development and await further instructions.

**What are the functions of the IO during the Preliminary Hearing stage?**

During Preliminary Hearing, IO is required to perform the following actions:

(a) Making arrangements for conducting the hearing.

(b)Setting the stage for smooth conduct of hearing

(c) Asking the statutory questions

(d) Finalisation of the question of Defence Assistant

(e) Fixing dates for Inspection of the originals of the documents

(f) Fixing dates for the submission of the list of additional documents and witnesses required by the CO for the purpose of his defence

(g) Finalisation of the documents and witnesses admissible for defence

(h) Taking action for procuring the additional documents required for the defence.

(i) Settling the issue of disputed documents

(j) Taking the documents on record

(k) Issue of certificates of attendance to the parties. This will be done during regular hearing stage also.

(l) Deciding on the requests for adjournment.

**What arrangements are to be made for conducting hearing?**

Even before the arrival of the parties, the IO should ensure necessary seating arrangements for conducting hearing. Preferably, the seating arrangement should be such that both the parties will have equal access to the IO and the IO can watch and hear both the parties comfortably. At any rate, the seating arrangements should not be such as to send any signal that IO is inclined in favour of either of the parties. Besides, it is desirable that no one other than those who are required for the hearing is present in the room while the hearing is in progress. This may not always be possible and it depends upon the space provided to the IO by the organisation. However, IO should apply his mind to this aspect. Making a stenographer and a computer available for the recording the proceedings is another aspect to be attended to by the IO.

**What are the activities to be performed by the IO during the regular hearing stage?**

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

a) Summoning witnesses

b) Monitoring the conduct of the examination of witnesses

c) Recording the statements of the witnesses

d) Recording the demeanor of the witnesses

e) Deciding objections about the questions raised during examination of witnesses.

f) Deciding requests for introducing additional witnesses.

g) Deciding requests for recalling witnesses

h) Asking the CO to state his defence on conclusion of the case of the Disciplinary Authority.

i) Putting the mandatory questions on conclusion of the case of the defence

j) Checking up from the CO as to whether he got sufficient opportunity for his defence.

k) Giving directions for the submission of the written briefs by the Presenting Officer and the CO.

**Does the IO have power to enforce attendance of witnesses?**

IO does not have power to enforce attendance of witnesses, except when an ad hoc notification in respect of the particular enquiry has been issued by the State Government authorizing the Inquiring Authority to exercise powers specified in Section 4 of The Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1976.

**What is to be done, if a listed witness does not turn up for enquiry?**

In case a Government official who has been named as a witness in a departmental proceeding fails to turn up, the matter may be reported to the higher authorities of the witnesses.

**What are the post hearing activities to be performed by the IO?**

During the last hearing, the IO will fix time limit for the PO and the CO to submit their respective written briefs. Thereafter, the IO prepares his report and submits the same to the Disciplinary Authority together with the records of the case.

**What is the time frame within which the Enquiry is to be completed by the IO?**

Enquiry Report is to be submitted by the IO within six months from the date of appointment.

# CONDUCT OF ENQUIRY

**What are the stages in conduct of enquiry?**

Conduct of enquiry comprises the following main stages:

(a) Pre – hearing stage: From the appointment of IO PO till the commencement of hearing. During this stage, the IO and PO examine the documents received by them and ensure their correctness. Besides, the PO prepares for the presentation of the case.

(b) Preliminary Hearing Stage: From the time the parties start appearing before the IO, till the commencement of presentation of evidence. During this stage CO is asked once again as to whether the charges are admitted, inspection of documents take place, CO presents the list of documents and oral witnesses required for the purpose of defence

(c) Regular hearing stage: during this stage, evidence is produced by the parties.

(d) Post hearing stage: during this stage, the PO and the CO submit their written briefs to the IO and the IO submits his/her report to the Disciplinary Authority.

**Is there any time limit for commencement of hearing?**

As per rule 7, first hearing of the case must be scheduled within 10 days of the IO receiving the Charge sheet. As the copy of the Charge

Sheet is sent to the IO together with the appointment order, it is implied that the enquiry is to commence within 10 days of the IO receiving the appointment order. The above rule also provides the time limit prescribed is extendable by maximum of another 10 days.

**What happens during the first hearing of the case?**

As per Rule 7, when the CO appears before the IO, the latter should ask whether the CO admits the charges or has any defence to make. If the CO pleads guilty in respect of any of the charges, the IO should get it recorded and get it signed by the CO. Rule 7 provides that the IO shall send a finding of guilt to the Disciplinary Authority in respect of the charges in respect of which the CO has pleaded guilty. In addition to the above, the IO shall fix a schedule for the following:

i. inspection of the documents listed in Annexure III of the Charge sheet, within five days extendable by a maximum of another five days [Rule 7

ii. Submission of the list of witnesses to be examined on behalf of the CO

iii. Submission of the list of additional documents required by the CO. within ten days extendable by a maximum of another ten days.

**Is it advisable for the IO to ask the CO during the first hearing as to whether the CO has faith in the IO?**

It is not a bad idea to ask the CO during the first hearing as to whether the CO has faith in the IO and record the answer to the

question. This may be quoted against the CO, in case the CO raises any frivolous complaint of bias later. On the other hand, if the CO expresses lack of faith on the IO in the first instance, the same may be recorded and the CO may be advised of the option open to him/her for seeking change of IO.

**Is it necessary for the IO and PO to be present during the inspection of listed documents by the CO?**

Not necessarily. The inspection of listed documents is to take place at "such place as the Enquiry 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."

**How to conduct inspection of listed documents which are held up in the court?**

The following alternatives are open in respect of the documents held up in the court and required for inspection by the CO:

(a) An application may be made to the court for making the documents available at least temporarily

(b) If the above request is not allowed by the court, inspection of the documents by the CO may be arranged in the Court.

**Can a document sought by the CO for the purpose of defence be denied?**

Any document sought by the CO for the purpose of defence, can be denied only on either of the two grounds. If the IO is of the opinion

that the document is not relevant to the case. In this case, the IO has to pass a reasoned order as prescribed in the proviso to Rule 7 of the Rules. In addition to the above, authority in possession of the documents may deny the production of documents for reasons to be recorded in writing that the production of the said document is against public interest

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.

**Can the IO deny allowing a witness named by the CO for the purpose of his/her defence?**

IO can deny a witness only on the ground of relevance.

**What is the sequence of events during Regular Hearing?**

Following is the sequence of events during Regular Hearing:

i. Documentary evidence on behalf of the Disciplinary Authority are taken on record.

ii. Oral evidence of Disciplinary Authority is taken on record.

iii. CO asked to state his/her defence.

iv. Documentary evidence on behalf of the Disciplinary Authority are taken on record

v. Oral evidence of Disciplinary Authority is taken on record.

vi. Mandatory question by the IO

vii. Fixing time for submission of briefs by the PO and CO.

**What is the procedure for procuring the documents demanded by the charged officer?**

Inquiring Authority should directly obtain the additional documents demanded by the charged officer. It is incorrect to assign this task to the Presenting officer.

**What is the order in which the witnesses are to be presented?**

The Presenting officer is to lead the State witnesses in the first instance. The order in which the State witnesses are to be led can be left to the discretion of the Presenting Officer. It is desirable to frame the sequence of the witnesses in such a way as to gradually build the case of the Disciplinary authority. After the State witnesses are examined, the charged officer can be asked to lead defence witnesses, if any, in the order decided by him/her.

**What are the stages in the examination of witnesses?**

Witnesses are examined through the under mentioned three stages:

(a) Examination in chief

(b) Cross examination

(c) Re-examination

**Who conducts the above three stages of examination:**

Examination in Chief is conducted by the party who is producing the witnesses i.e. examination in chief of the State witness will be done by the Presenting officer and examination in chief of the defence witnesses will be done by the Charged officer assisted by the Defence Assistant.

Cross examination is done by the opposite party. i.e. Cross examination of State witnesses will be done by the Charged officer, assisted by the Defence Assistant and cross examination of the defence witnesses will be done by the Presenting officer.

Re-examination will be done by the party who performed examination in chief.

**What is the scope of Examination in Chief?**

Examination in chief is confined to the relevant issue i.e. issues relating to the transaction on which the charges have been framed in the case of State witnesses and the points mentioned in the statement of defence in respect of defence witnesses.

**What is a leading question?**

Leading question is one which indirectly reveals the expected answer to the question.

**What is the provision regarding leading questions?**

Leading questions are prohibited during examination in chief and re-examination. There is no bar on asking a leading question during cross examination. This means that one cannot ask a leading question from one's own witness; but can ask a leading question from the witness presented by the opposite side. This general rule has an exception viz. that there is no bar on asking a leading question which is introductory in nature. E.g. You are in the working in the store since 2010?

**What is the scope of cross examination?**

Scope of cross is examination is a bit wide. Questions for assailing the credibility of the witness can also be raised. The following questions are however, prohibited during cross examination:

(a) Questions without any basis

(b) Questions which are obscene or indecent

(c) Questions which are intended to vex or annoy the witnesses

**What is the scope of re-examination?**

Re-examination will be confined to the issues on which cross-examination was conducted.

**Is there any scope for a second cross – examination?**

In case any new issue was raised during re-examination with the permission of the Inquiring Authority, one more opportunity for cross-examination must be afforded.

**Considering the scope of**

**examination in chief and cross examination, what should be the difference in approaches for these two activities?**

It is said that the art of successful examination in chief is to ask questions in such a way that the witnesses understands the answer expected - without the question being a leading question. On the contrary, the art of cross examination is to ask questions in such a way that the witness does not understands what is the purpose of the question.

**What is the procedure for recording of evidence by the witnesses?**

The statements of the witnesses may be recorded either in narrative form or in question answer form as deemed suitable. Generally, examination in chief may be in narrative form. At times it may even state as under: The witnesses confirmed the statement given by him during preliminary investigation and said he had nothing more to add and modify.

Cross-examination and re-examination will be in the form of question and answer. It is desirable that the questions and answers are numbered for the sake of easy reference in the written briefs of the PO and charged officer and in the Enquiry report. Witness will be asked to sign each page of the statement. Copies given to the CO and PO.

**What is the stage at which the charged officer is asked to lead evidence?**

After the case of the disciplinary

authority is over, the charged officer will be asked to state his defence. This is only an offer to the delinquent and if the delinquent does not state his/her defence, the enquiry will proceed.

**What is the order in which the charged officer will present defence?**

Charged officer will first present documentary evidence and then lead oral evidence.

**Can the CO be questioned by PO?**

PO can question the charged officer only if he/she presents himself/herself as a witness.

**What happens if a witness who had given a statement during preliminary investigation changes stand to favour the delinquent?**

Change of stand without any justifiable reason will amount to a misconduct and the Government servant who is guilty of such a misconduct renders himself/herself liable for disciplinary action. Provided that if a Government servant, who had made a statement in course of a preliminary enquiry, changes his stand during evidence in the enquiry, and if such action on his part is without justification or with the objective 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. Such misconduct in the context of criminal cases becomes all the more grave.

**Can a witness be called for the second time?**

Under Rule 7 of the Rules, the Inquiring Authority may at its discretion allow the Presenting officer to re-call witness. In the event of a witness being re-called and re-examined, care must be taken to provide to the opposite side an opportunity to cross-examine the witness as well. This is not at the discretion of the Inquiring Authority – but a mandate of the principle of natural justice which requires providing reasonable opportunity of defence.

**Can the Inquiring Authority question the witnesses?**

Rule 7 explicitly provides that the Inquiring Authority may also put such questions to the witness as it thinks fit. Two cautions must be borne in mind while exercising this statutory right. Firstly, the parties to the proceedings acquire a right to cross-examine the witness on the issued over which the Inquiring Authority has examined the witness. Secondly, the questions must not be with the object of establishing the charge. Such questions may put the Inquiring Authority in the mantle of the Presenting Officer which may lead to quashing of the proceedings on the allegation of bias.

**Can the Inquiring Authority question the charged officer?**

The Inquiring Authority is required under Rule 7 to question the Charged Officer generally about the circumstances appearing against him. However, probing questions which may lead to incrimination of the Charged Officer will cast aspersions about the role of the Inquiring Authority. Enquiry proceedings were set aside in Moni

Shankar Vs. Union of India (UOI) and Anr. [JT2008(3) SC484, (2008)3SCC484, 2008 (3)SLJ325(SC)] for the reason that the Inquiring Authority had exceeded his limit in asking the mandatory question, as may be seen from the following:

The Enquiry Officer had put the following questions to the appellant

Having heard all the PWs, please state if you plead guilty?

Please state if you require any additional documents/witness in your defence at this stage?

Do you wish to submit your oral defence or written defence brief?

**What is mandatory question?**

Rule 7 has a provision that empowers the Enquiry Authority to question the Charged Officer. This question shall be asked in the cases wherein the CO had not presented himself as a witness. Probably the use of the word "shall" in the sub rule has resulted in this being called a 'mandatory' question. However it must be understood that it may not be a question at all. The purpose of this question is to enable the CO to explain the circumstances against him. The IO is expected to question the CO "on the circumstances appearing against him" so that the CO can defend himself appropriately.

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

If a witness deposes in a language other than English but the

depositions are recorded in English, a translation in the language in which the witness deposed should be read to the witness by the Enquiry Officer. The Enquiry Officer will also record a certificate that the depositions were translated and explained to the witness in the language in which the witness deposed.

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

A government servant summoned by the Inquiring Authority for tendering evidence in a disciplinary proceedings is bound to attend the same. Failure to do so will amount a misconduct. Therefore, if a witness fails to turn up for enquiry without proper justification the Inquiring Authority may report the matter to the controlling officer of the witness so that disciplinary action could be initiated.

**Who bears the expenditure incurred by the witnesses and parties for attending the enquiry?**

In respect of serving Government Servants, the expenses are to be borne by the respective organization where the witness is employed based on the certificate issued by the Inquiring Authority. Otherwise the expenses will have to be met by the Disciplinary Authority.

# EVALUATION OF EVIDENCE

Culling out truth from the conflicting statements of the contesting parties is perhaps the most challenging part of the assignment of the Disciplinary Authority and the Inquiring Authority. This complex process is known as evaluation of evidence. Evaluation of evidence is perhaps the most complex and challenging area in the gamut of activities during departmental proceedings. Skill in evaluation of evidence is required to be possessed by almost all the functionaries. Presenting Officer is required to evaluate evidence and present his version in the brief of the PO. Inquiring Authority is required to evaluate evidence to arrive at the conclusion as to whether the charges are proved. Disciplinary Authority is required to make first hand appraisal of evidence and take a view as to whether the Inquiring Authority's conclusion are acceptable. Appellate Authority is also required to perform the above function. Although skill can be developed through exercises, case studies, etc. in this chapter an attempt is being made to provide the underpinning knowledge necessary for evaluation of evidence.

**What are the various types of evidence led in departmental proceedings?**

Generally two types of evidence are led in departmental evidence viz.

(a) documentary evidence and

(b) oral evidence.

In contrast, in criminal trials certain objects (such as weapons or clothes worn by the victim, etc.) may also be produced as evidence and these are known as Exhibits.

**What is the role of evidence in deciding the case?**

Following are some of the cardinal principle in drawing conclusions in judicial/ quasijudicial proceedings:

(a) Conclusions must be based on evidence

(b) There is no room for conjectures or surmises in drawing conclusions

(c) Reliance must be placed on the evidence made available to the Charged Officer during the enquiry

(d) No evidence behind the back of the Charged Officer.

(e) Decision making authorities should not import personal knowledge into the case.

What is meant by the standard of proof? Standard of proof or level of proof, refers to the quality of evidence produced to establish a fact. In a sense it indicates as to how strongly the evidence establishes the fact it purports to prove. Generally the following three levels of proof are referred to in judicial/legal proceedings:

(a) Preponderance of probability

(b) Clear and convincing evidence

(c) Proof beyond reasonable doubt

**What is the difference between the criminal trial and departmental proceedings in so far as evaluation of evidence is concerned?**

Generally the following three points of distinction exist between criminal trial and departmental proceedings in so far as evaluation of evidence is concerned:

(a) In criminal proceedings, standard of proof required is proof beyond reasonable doubt. On the other hand, preponderance of probability is adequate to establish the charge in departmental proceedings.

(b) Hearsay evidence is strictly prohibited in criminal trials. However, there is no bar against the reception of hearsay evidence by domestic tribunals. What value is to be attached to such evidence depends upon the facts and circumstances of each case.

(c) In domestic inquiries, a relaxed procedure is adopted for allowing circumstantial evidence.

**What is pre-ponderance of probability?**

Literal meaning of the word preponderance: is superiority in power, influence number or weight. As a level or standard of proof, pre-ponderance of probability means "more likely to have happened than otherwise.

**What is hearsay evidence?**

When a witness states a fact based on what he/she had heard from some other source without being a direct witness to the event, evidence tendered by such a person

is known as hearsay evidence.

**What are the rules regarding the admissibility of hearsay evidence?**

Hearsay evidence is prohibited in criminal trials. On the other hand, during departmental proceedings hearsay evidence can be taken into account in establishing the charge if there is corroborative material'.

**What is circumstantial evidence?**

Circumstantial evidence is the opposite of direct evidence. When no eyewitness is available, issues can be decided based on circumstantial evidence.

**What are the rules regarding circumstantial evidence?**

Tests laid down by the Hon'ble Supreme Court in the Case of Hanumant Vs. State of Madhya Pradesh [AIR 1952 SC 343, 1953 CriLJ 129, 1952 1 SCR] is applied in the matter of evaluation of circumstantial evidence in criminal trials. This has been reiterated in the case of Sharad Birdhi Chand Sarda vs State Of Maharashtra [1984 AIR 1622, 1985 SCR (1) 88] in the following terms:

"(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. xxxx (2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty, (3) The circumstances should be of a conclusive nature and tendency. (4) They should exclude every possible hypothesis

except the one to be proved, and (5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence." In quasi-judicial proceedings, relaxed norms are applied based on the principle of pre-ponderance of probability rather than conclusive nature of evidence and excluding every other hypothesis.

**Can a charged officer be acquitted of the charges even without putting up any defence at all?**

The charge leveled by the Disciplinary authority needs to be proved by leading evidence on behalf of the Disciplinary Authority. Charged officer has no duty to prove his innocence. Hence the charged officer can be acquitted based on the failure of the Presenting officer to establish that the charges have been proved.

**What is the concept of burden of proof?**

General rule is that one who wants the court (or the Inquiring Authority) to believe something, must lead evidence to establish the fact. This is known as the burden of proof.

If the disciplinary authority has leveled the charge that an employee had left the office before closing hours and without taking

permission, evidence must be led on behalf of the Disciplinary Authority to establish the same. If the defence of the Charged Officer contends that that he/she had taken permission to leave early, he/she must lead evidence to establish this fact. If the stand of the Disciplinary Authority is that the officer from whom the Charged Officer claims to have taken permission is not competent to grant permission, it is for the Disciplinary Authority to lead evidence in support of this fact.

| Factor | How does it apply |
|---|---|
| Integrity of the witness | Statement made by a person lacking integrity carries low credibility |
| Interest in the outcome of the case | A person who is interested in the outcome of the proceedings carries low credibility |
| Competence | Statement on technical issues are to be made by persons who are conversant with it. For example, whether two signatures are alike must be affirmed by a handwriting expert |
| Conduct | A witness who does not exaggerate, admits what he/she did not see or hear carries more credence |
| Consistency | Whether the statement is free from any self contradiction |
| Corroboration through other evidence | Whether the statements are in tune with the evidence derived from other sources. |
| Conformity with Experience | A witness who states things which are incredible for a normal human mind is hard to believe. |
| Conformity with normal human conduct | A brother casting aspersions on the character of his sister is difficult to believe. |
| Demeanor | How does the witness look during deposition |

**Can the statement of a witness be taken into account, even if he/she was not subjected to cross-examination?**

Witnesses are to be offered for cross examination. If the opposite side chooses not to exercise the right of cross- examination, there is no bar in taking into account the statement of such witnesses. If cross examination of a witness is not allowed or the witness did not present himself/herself for cross-examination, the statement of such witness should not be taken into consideration at all, Union of India Vs. P Thiagarajan [1998(8) JT 179].

What are the factors based on which the statement of a witness is given credence? Following are the credibility factors in respect of oral evidence:

How far the credibility of a witness depends upon his/her status? Status has no role in determining the credibility of witness

**What is meant by demeanour?**

Demeanour denotes the posture and behavior of the witness while deposing. This constitutes an important input in determining the credibility of evidence tendered by the witnesses. Generally the following constitute demeanour: hesitation doubts pace of deposition variations in tone confidence calmness posture eye contact or the lack of it facial expression i.e. bright or pale, etc.

Criminal Procedure Code provides that Magistrate should make note of the demeannour of the witnesses. Similarly, the Inquiring Authority should also make note of the

demeanour of the witnesses.

**What are the general principles for evaluation of evidence?**

Evidence is

- to be weighed; not counted
- Affirmative statements carry more weight than negative statements Actions carry more weight than words
- Even un- impeached evidence may be rejected
- Rejection of evidence by one does not necessarily mean the acceptance of the opposite

Is there any exception to the rule that facts must be established through evidence and the decision making authority must not import personal knowledge into the case?

Irrefutable matters of common sense and laws of science do not require any evidence. For example, it is a matter of common sense that capacity of a super deluxe bus cannot be seventy five. An Enquiry authority may reject evidence to the effect that a person travelled in a super deluxe bus carrying eighty passengers from Delhi to Kanyakumari. There is no need for controverting the above statement through the crew of the bus or another witness who had seen the above bus.

Similarly an Inquiring Authority can conclude that any object thrown above has to come down. There is no need for a physics professor to come and testify about the law of gravitation.

# EX-PARTE ENQUIRY

**What is ex parte Enquiry?**

An enquiry in which the charged officer is not represented is known as Ex- parte enquiry

**What is the statutory provision regarding ex parte proceedings?**

Rule 7(x) of the Rules provides as under: " 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 inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the enquiry ex parte."

**What are the conditions under which ex-parte enquiry may be resorted to?**

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

(a) Articles of charge should have been delivered

(b) The charged officer had failed to submit the written statement of defence on or before the specified date or

(c) Does not appear in person before the Inquiring Authority or

(d) Fails or refuses to comply with the provisions of the Rules If

delivery of articles of charge is pre-requisite for conducting ex- parte enquiry, what will be the possibility of going ex-parte when the charged officer evades or refuses acceptance of Charge Sheet?

Firstly it must be appreciated that delivery of charge Sheet does not mean physical delivery and obtaining an acknowledgement therefor. Constructive delivery of Charge Sheet is adequate to hold that the articles of charge have been delivered.

As a measure of precaution, the charge sheet may be pasted on the notice board, doors of the residence of the charged officer, uploaded on the web site of the organization and an advertisement may be issued in a news paper regarding the initiation of the disciplinary proceedings. For the pasting of the charge sheet on the doors, independent witnesses' statements may be obtained.

**Following steps shall be kept in mind while conducting an Ex-parte enquiry**

(a) Decision is taken by the Inquiring Authority

(b) There is no statutory requirement of recording any reasons as to why enquiry is to be held ex-parte

(c) Conditions precedent specified in rule 7(x) must be satisfied

(d) During ex-parte Enquiry, the Charges need to be proved by leading evidence on behalf of the Disciplinary Authority

(e) There is scope for the Charged Officer turning up at a later date and seeking to participate in the ex-

parte enquiry

(f) There is a possibility that the enquiry may not result in any charge being established

**What precautions are necessary before for conducting ex-parte enquiry?**

Following pre-cautions are necessary before resorting to ex-parte enquiry"

(a) Before proceeding ex-parte, Inquiring Authority must ensure that communications are being sent to the correct address of the Charged Officer

(b) Secondly, it must be ensured that sufficient time is being provided for attending the enquiry, with due regard to the travel arrangement between the place of the enquiry and place of posting or residence of the Charged Officer .

(c) Thirdly the Inquiring Authority must ensure that the Charged officer is not on sanctioned medical leave or on any official assignment.

(d) If the Charged Officer is under suspension, Inquiring Authority must check whether the non-attendance is attributable to the non-payment of subsistence allowance

(e) Whether the Charged Officer has been warned that continued absence would result in the proceedings being conducted ex-parte.

**Can the enquiry be held ex-parte if the charged officer seeks adjournment on medical ground without producing medical certificate?**

It has been held in the case of Union of India Vs. I S Singh [1994 SCC Supl. (2) 518] that under such a situation, the Inquiring Authority should either ask for a copy of the medical certificate or in case of doubt, direct the charged officer to get examined by a medical officer. Taking recourse to ex-parte enquiry would amount to violation of the principle of natural justice. The following extract is relevant: So far as the second ground is concerned, a few facts need be stated. An enquiry was held, in the first instance, which was not found to be in order by the disciplinary authority who directed a fresh enquiry. When notices were issued in the second enquiry, they could not be served on the respondent. On a later date, the respondent sent an application stating that he is suffering from unsoundness of mind and that the enquiry may be postponed till he regains his mental health. The respondent also states that he sent his medical certificate along with he is application. (Indeed, according to him, he sent not one but three letters to the said effect.) The report of the Enquiry Officer, however, does not show that he paid any attention to these letters. If, indeed, the letters were not accompanied by medical certificates, as is now asserted by Shri Mahajan, learned counsel for the appellants, the proper course for the Enquiry Officer was to have called upon the respondent either to produce a medical certificate or to direct him to be examined by a medical officer specified by him. The enquiry report does not even refer to the request contained in the said application nor does it mention why and for what reasons did he

ignore the said plea of the respondent. The Enquiry Officer proceeded ex parte, in spite of the said letters and made his recommendation on the basis of which the aforesaid penalty was imposed. It is evident from the facts stated above that the Enquiry Officer has not only conducted the enquiry in a manner contrary to the procedure prescribed by Rule 7 of the Rules, 1999, but also in violation of the principles of natural justice.

**What procedure is to be followed during ex-parte proceedings?**

During ex-parte proceedings, the Presenting Officer should be directed to lead evidence and establish the charge. As the Charged Officer does not participate in the proceedings, the stage of cross – examination of State Witnesses may not take place. However, the Inquiring Authority is at liberty to put questions as it thinks fit. Power in this regard has been given under Rule 7(vi) of the Rules. Inquiring Authority should however ensure that the questions put by it are not such as to establish the charge. Any questions of this nature may present the Inquiring Authority as wearing the mantle of Presenting Officer and cast aspersions on its neutrality. Even though the Charged Officer is not attending the Enquiry, the Inquiring Authority should ensure that copies of all the documents relating to the enquiry are sent to the Charged Officer – for example the Daily Order Sheets, statements of the witnesses, written brief of the Presenting officer, etc. The Inquiring Authority should submit its report to the Disciplinary

Authority together with other documents as in any other enquiry.

**Can the Charged Officer be allowed to participate in the ex-parte enquiry at a later stage?**

Ex-parte enquiry, once commenced, does not amount to closing the doors for the Charged Officer. This is only an enabling provision which provides for continuing with the enquiry despite non-co- operation by the Charged Officer. It should not be perceived as a penal provision for putting the Charged Officer to a disadvantage. The Charged Officer who could not or intentionally did not attend a few hearings does not lose his/her right of reasonable opportunity of defence.

Accordingly, the Charged Officer cannot be prevented from participating in the enquiry at a later stage. There may be cases wherein the Charged Officer may try to put the clock back i.e. the Charged Officer may like a witness to be recalled and cross- examined. Such requests need to be considered on merit. If the Charged Officer provides sufficient satisfactory reason for non- appearance, the request for putting the clock may be considered.

Thus the position can be summarized as under:

(a) Future participation is a matter of right of the Charged Officer

(b) Putting the clock back is a matter of discretion of the Inquiring Authority.

# REPORT OF INQUIRING OFFICER

**What is the purpose of the Enquiry Report?**

Purpose of the Enquiry Report is to analyse the evidence received in the course of the enquiry and the submissions made by the PO and the CO through their respective briefs and give a finding as to whether the charges are proved.

**What are the material based on which the Enquiry Report is made?**

Input for the Enquiry Report is obtained from the following:

(a) Charge sheet

(b) Documents submitted in the course of the enquiry (Listed documents as well as additional documents demanded by the Charged Officer)

(c) Statements of the witnesses during Examination in Chief, Cross Examination and Re-examination

(d) Statement of defence given by the Charged Officer under Rule 7(vii) of the Rules, 1999 or corresponding rule under which the enquiry is being held

(e) Statement of defence given by the Charged Officer in response to the question under Rule 7(xii) of the Rules or corresponding rule under which the enquiry is being held

(f) Submissions by the Presenting Officer and the Charged Officer

including written brief, if any, under the Rules, 1999 or corresponding rule under which the enquiry is being held While the core material for the Enquiry Report would be available in the above documents, Daily Order Sheets and the orders passed during the enquiry may also supply useful material in answering allegations of inadequate opportunity if any raised by the Charged Officer.

**What are the precautions to be observed by the IO in preparing the report?**

Inquiring Authority should take care of the following while preparing the report:

a. The authority should confine to stating as to whether the charges have been proved or otherwise. Any mention by the Inquiring Authority regarding the quantum of penalty may raise serious doubts about its neutrality.

The following observation by the Hon'ble Supreme Court in the case of State of Uttaranchal and Ors. Vs. Kharak Singh [JT2008(9)SC205, (2008)8SCC236, 2009(1)SLJ375(SC)] is relevant in this connection:

Another infirmity in the report of the enquiry officer is that he concluded the enquiry holding that all the charges have been proved and he recommended for dismissal of the delinquent from service. The last paragraph of his report dated 16.11.1985 reads as under : During the course of above enquiry, such facts have come into light from which it is proved that the employee who has doubtful character and does not obey the order, does not

have the right to continue in the government service and it is recommended to dismiss him from the service with immediate effect. (emphasis supplied) Though there is no specific bar in offering views by the enquiry officer, in the case on hand, the enquiry officer exceeded his limit by saying that the officer has no right to continue in the government service and he has to be dismissed from service with immediate effect. As pointed out above, awarding appropriate punishment is the exclusive jurisdiction of the punishing /disciplinary authority and it depends upon the nature and gravity of the proved charge/charges and other attended circumstances. It is clear from the materials, the officer, who inspected and noted the shortfall of trees, himself conducted the enquiry, arrived at a conclusion holding the charges proved and also strongly recommended severe punishment of dismissal from service. The entire action and the course adopted by the enquiry officer cannot be accepted and is contrary to the well-known principles enunciated by this Court.

b. It must be ensured that all the findings and conclusions in the report are based on evidence produced during the enquiry

c. Only on the material made available to the Charged Officer and in respect of which opportunity was provided for controverting the same can be relied upon for drawing conclusions

d. Inquiring Authority should ensure not to import its personal knowledge in preparing the report.

**What is meant by "the charge is partially proved"?**

A charge is supposed to contain a single omission or commission on the part of the Charged Officer such as the following:

(a) The charged officer had filed a false claim

(b) The charged officer had abused his official position by showing a favour to a relative

(c) The charged officer had violated a specific rule in the purchase code.

In the above kind of single dimensional charge, the findings should be either that the charge was proved or not proved. Although the charge at (b) above, has two parts viz. abusing the position and showing a favour to relative, the two are inextricably linked that the proof of one amounts to proof of another. On the contrary, at times, a charge may contain more than one element such as the following:

(a) The charged officer had failed to comply with the provisions of the purchase code and thereby caused loss to the state.

(b) The charged officer had submitted a misleading information and thereby shown favour to a particular supplier.

(c) The charged officer had manipulated the marks obtained by seven ineligible candidates and passed them in the departmental examination.

In these types of charges, a part of the charge may be proved. For example, violation of the

provisions of the purchase code may be proved and the loss to the state may not be proved. Alternatively, no evidence might have been led about the marks obtained by two of the seven candidates. Under such circumstances the Enquiry Authority may have to state that the charge is partially proved. Under such a contingency, the Enquiry Authority should mention explicitly as to which part of the charge is proved and which part is not proved.

**What should the Enquiry Authority do if the enquiry establishes a charge other than the one mentioned in the Charge Sheet?**

It is the statutory responsibility of the Inquiring Authority to give its finding on any article of charge different from the original article of charge if the same is established in the course of the enquiry. This is subject to the condition that the Charged Officer had an opportunity of defending himself/herself against such a charge. In this connection Explanation under Rule 7 of the Rules, 1999 provides as under:

"EXPLANATION- If in the opinion of the inquiring authority the proceedings of the enquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable

opportunity of defending himself against such article of charge."

**What should be the format of the Report?**

The content of the Enquiry Report as under:

After the conclusion of the enquiry, a report shall be prepared and it shall contain-

(a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(b) the defence of the Government servant in respect of each article of charge;

(c) an assessment of the evidence in respect of each article of charge;

(d) the findings on each article of charge and the reasons therefor.

Apart from the above, there is no statutory format for the Enquiry Report.

However, the following format may be suggested:

(a) an introductory paragraph in which reference will be made to the appointment of the Inquiring Authority and the dates on which and the places where the hearings were held;

(b) charges that were framed;

(c) charges which were admitted or dropped or not pressed, if any;

(d) charges that were actually enquired into;

(e) brief statement of facts and documents which have been admitted;

(f) brief statement of the case of the disciplinary authority in respect of the charges enquired into;

(g) brief statement of the defence;

(h) points for determination;

(i) assessment of the evidence in respect of each point set out for determination and finding thereon;

(j) finding on each article of charge;

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

It is required for submission of the following by the Inquiring Authority:

The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of enquiry which shall include :-

(a) the report prepared by as per the Rules, 1999.

(b) the written statement of defence, if any, submitted by the Government servant;

(c) the oral and documentary evidence produced in the course of the enquiry;

(d) written briefs, if any, filed by the Presenting Officer or the Government servant or both during the course of the enquiry; and

(e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the enquiry.

The above mandatory requirement may be elaborated as under. Separate folders containing each of

the following are required to be sent along with the Enquiry Report:-

i. Documents produced in the course of enquiry

i. Documents produced on behalf of the Disciplinary Authority

ii. Documents produced on behalf of the Charged Officer

ii. Statements of witnesses by way Examination in Chief, Cross Examination and Re-examination in the order in which the witnesses were examined

iii. Daily Order Sheets relating to the Enquiry

iv. Written Statements of defence made under Rule 7 of the Rules, 1999 or corresponding rule under which the enquiry was held.

v. Submissions by the Presenting Officer and the Charged Officer including written brief, if any, under Rule 7 of the Rules, 1999 or corresponding rule under which the enquiry was held

vi. Orders passed by the enquiry Authority and the Disciplinary Authority in the course of enquiry; the following, for example:

i. order relating to allowing or rejecting the request by charged officer seeking additional documents for defence

ii. order relating to request for appointment of a Legal Practioner as defence Assistant

iii. order on the request of the

Charged Officer for change of Inquiring Authority, etc.

vii. Correspondence entered into during the enquiry

**To whom is the Enquiry Report sent?**

Enquiry Report is sent to the Disciplinary Authority. It must be clearly noted that the Inquiring Authority should not send copy of the report to the Charged Officer.

**What are the powers of the Inquiring Authority regarding recalling and modifying the Enquiry Report?**

The inquiring Authority becomes a functus officio after signing the report. The Enquiry Officer after signing the report becomes functus officio and cannot thereafter make any modification in the report. Needless to add that the Disciplinary Authority, on examination of the Enquiry Report is empowered to remit the case back to the Inquiring Authority for further Enquiry. In such an eventuality, the Inquiring Authority is duty bound to comply with the instructions of the Disciplinary Authority.

**How many copies of the Enquiry Report are to be sent?**

The Enquiry 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 delinquents;

ii. one copy for the Special Police Establishment in cases investigated by them.

# ACTION ON ENQUIRY REPORT

**What are the basic questions to be considered by the Disciplinary Authority on the Enquiry Report?**

The Disciplinary Authority, on receipt of the Enquiry Report is to examine the report in the following directions:

(a) Whether the enquiry has been conducted in accordance with the statutory provisions as well as the Principles of Natural Justice by providing reasonable opportunity to the delinquent?

(b) Whether the findings in the Enquiry Report are acceptable? It may be seen from the above that the first issue for consideration is regarding the procedural propriety of the enquiry conducted by the Inquiring Authority and the second question is about the correctness of the conclusions of the above Authority.

**How far the findings of the Inquiring Authority are binding on the Disciplinary Authority?**

Findings of the Inquiring Authority are not binding on the Disciplinary Authority, who is at liberty to disagree with the same by recording reasons.

**Can the Disciplinary Authority order for a fresh Enquiry if it is not satisfied with the Enquiry Report received by it?**

Disciplinary Authority is

empowered to remit the case to the Inquiring Authority for further enquiry. Use of the word 'further" implies that the earlier enquiry cannot be dumped for good and a fresh enquiry be conducted. Besides, the phrase used is "the Inquiring Authority" and not "an Inquiring Authority'.

This implies that the further enquiry is to be held by the same Inquiring Authority who held the earlier enquiry. Of course, this is without prejudice to the powers of the Disciplinary Authority to appoint or re-appoint Inquiring Authority.

**Can the disciplinary Authority remit the case to a new Inquiring Authority if it is not satisfied with the manner in which the Inquiring Authority had conducted the enquiry in the first instance?**

"the Inquiring Authority" and not "an Inquiring Authority'. This implies that the further enquiry is to be held by the same Inquiring Authority who held the earlier enquiry. Of course this is without prejudice to the powers of the Disciplinary Authority to appoint Inquiring Authority which should include powers to replace it as well.

**Can the Disciplinary Authority order for a fresh enquiry if it is not satisfied with the findings by the Inquiring Authority?**

In the case of K R Deb Vs. Collector Of Central Excise [1971 AIR 1447, 1971 SCR 375 ] facts were as under: The appellant was a sub-Inspector of Central Excise. A departmental enquiry was held against him in respect of a charge of misappropriation of Government money. The Enquiry Officer

exonerated him. The Collector Central Excise, ordered another Enquiry Officer to make a report after taking further evidence. The second Enquiry Officer at first exonerated the appellant but later, after taking some more evidence as directed by the Collector, reported that although the charge against the appellant was not proved his conduct may not be above board. Dissatisfied with the report the Collector ordered a fresh enquiry to be held by a third officer. This time a verdict of guilty was given and the appellant was dismissed. The appellant's writ petition in the Court of the Judicial Commissioner Tripura having failed he appealed to the Supreme Court by special leave. The question for consideration was whether the multiple inquiries held against the appellant were in accordance with Rule 15 of the Classification and Control Rules. 1957, Hon'ble Supreme Court set aside the proceedings and the penalty order of dismissal holding that Rule, 15 on the face of it really provides for one enquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the enquiry or some important witnesses were not available at the time of the enquiry or were not examined for some other reason, the Disciplinary Authority may ask the Enquiry Officer to record further evidence. But there is no provision in r. 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence

itself and come to its own conclusion under r. 9. The rules do not contemplate an action such as taken by the Collector in appointing a third Enquiry Officer. It seems that the Collector instead of taking responsibility himself was determined to get some officer to report against the appellant. The procedure adopted was not only against the rules but also harassing to the appellant. In the result it must be held that no proper enquiry has been conducted in the case and, therefore, there has been a breach of Art. 311(2) of the Constitution. [380 E] Services (Classification, Control and Appeal) Rules, 1957. It was contended that rule 15 of the 'Classification and Control Rules did not contemplate successive inquiries, and at any rate, even if it contemplated, successive inquiries there was no provision for setting aside earlier inquiries without 'giving any reason whatsoever. It was further contended that the order dated February 13, 1962 was mala fide. Rule 15(1) of the Classification and Control Rules reads as follows: "(1) Without prejudice to the, provisions of; the Public Servants (Inquiry) Act, 1850, no order imposing on a Government servant any of the penalties specified in clauses (iv) 'to (vii) of rule 13 shall be passed except after an enquiry, held, as far as may be,2 in. manner hereinafter provided." Clause (2) of. rule 15 provides for framing of charges and communication in writing to the 'government servant of these charges With the statement of allegations on which they are based, and it also provides for a written statement of defence. Under cl. (3) the government servant is

entitled to inspect and take extracts from such official records as he may specify, subject to certain exceptions. Under clause (4) on receipt of the written statement of defence the Disciplinary Authority may itself enquire into such. of the charges as are not admitted, or if it considers it necessary so to do, appoint a Board of Enquiry or an Inquiring Officer for the purpose. Clause (7) provides that at the conclusion of the enquiry, the Inquiring Authority shall prepare a report of the enquiry, recording its findings on each of the charges together with reasons therefore. If in the opinion of such authority the proceedings of the enquiry establish charges different from those originally framed it may record findings on such charges provided that findings on such charges shall not be recorded unless the Government servant has admitted the facts constituting them or has bad an opportunity of defending himself against them. Under cl. (9) "the Disciplinary Authority shall, if it is not the Inquiring Authority, consider the record of the enquiry and record its findings on each charge." Clause (10) provides for issue of show-cause notice. It seems to us that Rule 15, on the face of it, really provides for one enquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the enquiry or some important witnesses were not available at the time of the enquiry or were not examined for some other reason, the Disciplinary Authority may ask the Enquiry Officer to record further evidence. But there is no provision in rule 15

for completely setting aside previous inquiries on the ground that the report- of, the Inquiring Officer or Officers does not appeal to the disciplinary, Authority-. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9. In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get" some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant Before the Judicial commissioner the point was put slightly differently and, it was urged that the proceedings showed that the Disciplinary Authority had made up its mind to dismiss the appellant. The Judicial Commissioner held that on the facts it could not be said that the Disciplinary Authority was prejudiced against the appellant. But it seems to us that on the material on record a suspicion does arise, that the Collector was determined to get some Enquiry Officer to report against the appellant. In the result we hold that no proper enquiry has been conducted in the case and, therefore, there has been a breach of art. 311(2) of the Constitution. The appeal is accordingly allowed and the order dated June 4, 1962 quashed. and it is declared that the appellant should be treated as still continuing in service. He should be paid his pay and allowances for the period he has been out of office.

**What are the illustrative circumstances when the cases may be remitted to the Inquiring Authority for Further enquiry?**

Illustrative circumstances where the Disciplinary Authority may remit the case to the Inquiring Authority for further Enquiry are as under:

(a) Where the Inquiring Authority has failed to ask the mandatory question under Rule 7 of the Rules, 1999 or any other corresponding rule under which the enquiry was held

(b) Where the Inquiring Authority has disallowed the additional document or witness demanded by the Charged Officer and in the opinion of the Disciplinary Authority the disallowed document or witness is relevant for the purpose of defence

(c) Where the enquiry Authority has rejected the request for engaging a defence assistant from outstation and in the opinion of the Disciplinary Authority the request of the Charged Officer is justified

(d) Where the ex-parte proceedings were initiated due to absence of Charged Officer and later on when the Charged Officer was prevented from participating in further proceedings on the plea that ex-parte enquiry had commenced.

**What will happen in cases of incompatibility of the level of the Disciplinary Authority who had issued charge sheet and the kind of penalty proposed to be imposed?**

| Authority who issued charge sheet | Penalty proposed to be imposed | Authority who is to impose penalty |
|---|---|---|
| Authority competent to impose Major Penalty | Major Penalty | Authority competent to impose Major Penalty |
| Authority competent to impose Major Penalty | Major Penalty | Authority competent to impose Major Penalty |
| Authority competent to impose Major Penalty | Major Penalty | Authority competent to impose Major Penalty |
| Authority competent to impose Major Penalty | Major Penalty | Authority competent to impose Major Penalty |

**If the Disciplinary Authority is of the opinion that no penalty is to be imposed on the Charged Officer, is it still required to pass an order to the effect?**

Although Rule 10 of the Rules, 1999 mentions the passing of only the orders imposing penalty, it is desirable that the statutory proceedings are brought to a conclusion through a formal orders. This will go a long way in relieving the Charged Officer of the agony and trauma suffered since the issue of Charge Sheet.

**What is the procedure for forwarding copy of the Enquiry Report and other documents to the Charged Officer?**

The following documents are to be made available to the Charged officer who may also be provided with an opportunity to make representation against the contents:

(a) Copy of the Enquiry Report

(b) Copy of note of disagreement,

if any, of the Disciplinary Authority with the conclusions of the Inquiring Authority

(c) Advice of the Commission where applicable

**What precaution is necessary while forwarding the Enquiry Report to the Charged Officer?**

Rule 9(4) of the Rules, 1999 which provides for forwarding the copy of the Enquiry Report to the Charged Officer prescribes that the Disciplinary Authority should forward its own tentative reasons for disagreement if any. The use of the word tentative makes it clear that the Disciplinary Authority should keep an open mind. This attitude of the disciplinary authority should manifest in its communication as well.

**What is the time limit for passing of final order?**

It has been envisaged that it should normally be possible for the disciplinary authority to take a final decision on the enquiry report within a period of three months. In cases where it is felt that it is not possible to adhere to this time limit, a report may be submitted to the next higher authority indicating the additional period required and reasons for the same.

# SPEAKING ORDERS

**What are the main precautions to be observed while drafting penalty orders?**

While drafting penalty orders it must be ensured that the final orders are speaking orders and are free from ambiguity or vagueness.

**What is a speaking order?**

Speaking order may be defined as an order which contains not only the conclusions and directions but also the reasons that have led to the conclusions. It must not be confused with "oral orders" or "verbal directions". Normally, courts used to reserve judgments when the arguments are concluded. Judgments will be delivered after some time lag because the court has to evaluate the evidence received and the submissions made by the parties. Contrary to this, the court may dictate orders in the court immediately on hearing the parties. Such orders are known as "Oral orders". Although these are called Oral Orders, they are also reduced to writing and the copies of these orders are also supplied to the parties in due course of time. The term "Verbal instructions" refers to the instructions issued by superior officers to their subordinates under urgent circumstances. UP Government Servant Conduct Rules requires that such instructions should be confirmed through written instructions as soon as possible.

**What are the advantages of speaking orders?**

- Disclosure guarantees consideration
- Introduces clarity
- Excludes or minimises arbitrariness
- Satisfaction of the party
- Enables appellate forum to exercise control

**What are the instances in the course of disciplinary proceedings wherein speaking orders are to be issued?**

Firstly it must be understood that the speaking orders is not confined to disciplinary proceedings. All orders having an impact on the employees are to be speaking orders. For example, rejection of the request of an employee seeking stepping up of pay on par with junior should be through speaking orders. Disposal of a representation against supersession in the matter of promotion should also be through speaking orders. It needs no emphasis that orders passed in the course of disciplinary proceedings have a far reaching impact on the employee because they relate not only to career prospects and monetary issues but also have a bearing on the honour and reputation of the employee concerned. Thus there are all the more stronger reasons for passing reasoned orders while conducting disciplinary proceedings. An illustrative and non- exhaustive list of instances when speaking orders are required to be issued in the course of disciplinary proceedings

is as under:

- Deciding the request of the Charged officer on defence documents and witnesses
- Deciding on the request for change of Inquiring Authority Deciding on the request of the charged officer for engagement of legal practioner for the purpose of defence
- Deciding on the request of the charged officer for engagement of a defence Assistant from out station
- Deciding on the request for adjournment
- Disposal of the appeal or review of revision application.
- Appeal against suspension
- Appeal for enhancement of subsistence allowance
- Decision regarding the treatment of period of suspension

**There are some orders which are based on subjective satisfaction of the disciplinary authority. Under such circumstances, what reason can be given in the order?**

No doubt there are some areas where the decision is made based on the subjective satisfaction of the authority concerned as in the instances where the rule specifically and explicitly indicates in some areas that the authority may decide "having regard to the circumstances of the case. For example, the request for engagement of legal practioner as defence assistant may be permitted by the Disciplinary Authority

"having regard to the circumstances of the case". Rule 7. Similarly, Rule 10 provides that for imposing a minor penalty, the provisions of Rule 7 may be followed if "the disciplinary authority is of the opinion that such enquiry is necessary." Even in areas of exercise of discretionary powers, the orders should indicate application of mind. Besides, although some of the powers appear purely discretionary, there are guidelines for exercise of such powers.

Decision making authority may consider stating that the delinquent official has not justified the engagement of legal practioner and that the special circumstances (comparable to those mentioned in the above OM) do not exist in the present case. Two important factors in this regard are:

(a) There must be evidence of application of mind

(b) Referring to, if not reproducing in the order, the submissions of the applicant and the relevant rule position will normally be a clear indication of application of mind.

**What are the essential ingredients of a speaking order?**

Speaking order should necessarily contain the following:

(a) Context: The order should narrate the back ground of the case. As has been laid down in a catena of decisions, law is not to be applied in vacuum. The circumstances that have caused the issue of the orders have to be brought out clearly in the introductory portion of the order. For example, if there is

representation about incorrect pay fixation, the speaking order disposing of the representation should narrate how the anomaly has crept in, etc.

(b) Contentions: Rival submissions, where applicable, must be brought out in the order. For example the evidence led by the presenting officer in support of the charges and by the charged officer for refuting the charges. Needless to add that there may be cases wherein submissions may be unilateral as is the case of stepping up of pay, etc. Even in the course of disciplinary proceedings, there may be some instances wherein the concept of rival submission may not apply as in the case of representation for change of Inquiring Authority or for engagement of legal practioner as defence assistant.

(c) Consideration: The order should explicitly evaluate the submissions made by the parties vis-à-vis each other and in the light of the relevant statutory provisions. Each submission by the parties must be considered with a view to decide about its acceptability or otherwise.

(d) Conclusions: Outcome of the consideration is the ultimate purpose of the order. It must be ensured that each conclusion arrived at in the order must rest on facts and law.

**What is the precaution to be taken in the matter of specifying the penalty?**

The penalty being imposed must be free from ambiguity and vagueness. Scope of penalty must be clearly brought out in the order without

leaving any scope for interpretation or filling up the gap through arguments such as 'by necessary implication'. While there cannot be any confusion with regard to orders of Dismissal, removal from service and censure, care must be taken in the following types of penalties as shown against each:

a. Withholding of promotion: such an order should clearly state the period for which promotion is withheld.

b. Recovery from pay: This penalty can be imposed only when it has been established that the Government servant was guilty of negligence or breach of orders or rules which caused the loss. When ordering such recovery the disciplinary authority should clearly state as to how exactly the negligence was responsible for the loss.

(c) The order should also specify the following:

(i) Total amount to be recovered

(ii) number of installments

(iii) Amount to be recovered in each installment

(d) Withholding of increment – such orders should give the period for which increment is withheld and whether the withholding will have the effect of postponing future increments.

(e) Reduction to a lower stage in the time scale of pay.

Orders of this kind should indicate the following:

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

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

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

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

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

(f) Reduction to a lower time scale of pay, grade, post or service: such an order should cover the following aspects:

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

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

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

(iv)if the penalty is imposed for an unspecified period directions regarding conditions of restoration to the grade or posts or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service.

**What is the deficiency if the order is not a speaking one and what is its impact?**

The following observations by the

Apex Court in the case of Markand C. Gandhi Vs. Rohini M. Dandekar Civil Appeal No. 4168 of 2008 Decided On: 17.07.2008 highlights the inadequacy of non- speaking orders: "4. The impugned order runs into 23 pages. Upto the middle of Page 10, the Committee has referred to cases of the parties; from middle of Page 10 to middle of Page 11, issues have been mentioned; from middle of Page 11 to the top of Page 22, the Committee has referred to the evidence, oral and documentary, adduced on behalf of the parties without discussing the same and recording any finding whatsoever in relation to the veracity or otherwise of the evidence; and thereafter disposed of the proceeding which may be usefully quoted hereunder: We have gone through the records. The issues were framed on 18-8-1990. Issue No. 1 relates to a threat given by the Respondent to the complainant on 8-6-1977. This issue is not related to the professional misconduct and in this regard the complainant has not submitted any documentary evidence to prove her stand. As far as the issue No. 2 is concerned, this is a very important issue. The complainant has submitted document in support of her contention and proved the issue. This fact cannot be denied by oral version, as there is documentary record. As far as the issue No. 3 is concerned, this is also proved by the complainant by her evidence. Issue No. 4 relates to the certificate issued by the Respondent. This has also been proved by the complainant by documentary proof which is on record. Likewise Issue No. 6 is also proved by documentary proof.

Issues Nos. 6 to 7 relate to one Mr. Vora, architect and builder and Mr. B.S. Jain and the Respondent. The main issue in this controversy is issue No. 8 i.e., whether the Respondent is guilty of professional misconduct or other misconduct. In this respect it is the admitted position before the Committee that some documents were already on record and retained by the Respondent and the certificate issued by the Respondent with regard to the property in question. It is also admitted position that in this matter a compromise letter was filed by the parties earlier. We have heard the arguments and we have also perused the documents. The complainant has proved her allegations made in the complaint against the Respondent. The allegations made are very serious. We are of the opinion that the Respondent has committed professional misconduct and thus we hold him guilty of professional misconduct and suspend him from practice as an advocate before any Court or authority in India for a period of five years and we also impose a cost of Rs. 5,000/- to be paid by him to the Bar Council of India which on deposit will go the Advocates Welfare Fund of the Bar Council of India. If the amount of cost is not paid within one month from the date of receipt of this order, the suspension will be extended for six months more. 5. From a bare perusal of the order, it would appear that, virtually, there is no discussion of oral or documentary evidence adduced by the parties. The Committee has not recorded any reason whatsoever for accepting or rejecting the evidence adduced on behalf of the parties and

recorded finding in relation to the misconduct by a rule of thumb and not rule of law. Such an order is not expected from a Committee constituted by a statutory body like B.C.I. 6. We are clearly of the opinion that the finding in relation to misconduct being in colossal ignorance of the doctrine of audi alteram partem is arbitrary and consequently in infraction of the principle enshrined in Article 14 of the Constitution of India, which make the order wholly unwarranted and liable to be set aside. This case is a glaring example of complete betrayal of confidence reposed by the Legislature in such a body consisting exclusively of the members of legal profession which is considered to be one of the most noble profession if not the most. 7. Accordingly, the appeal is allowed, impugned order rendered by the Disciplinary Committee of the B.C.I, is set aside and the matter is remitted, for fresh consideration and decision on merits in accordance with law. Chairman of the B.C.I, will see that this case is not heard by the Disciplinary Committee which had disposed of the complaint by the impugned order and an altogether different Committee shall be constituted for dealing with this case.

# APPEAL, REVISION AND REVIEW

**What departmental remedies are available to the employee aggrieved by an order adversely affecting the career?**

An employee aggrieved by an order adversely affecting the career has departmental remedies in the form of Appeal, Revision and Review. As is well known, administrative orders are subject to judicial scrutiny as well. But generally, Courts and Tribunals will entertain the Writ or Application only if the employee satisfies the judicial forum that remedies available within the administrative machinery have been availed or could not be availed for valid reason.

**What is the inter-se relationship between the above stated three departmental remedies?**

| FACTORS | APPEAL | REVISION | REVIEW |
|---|---|---|---|
| By Whom | Appellate Authority | Includes Appellate Authority | Governor |
| How | On Appeal by the Individual | On Own Motion or Otherwise | On Own Motion or Otherwise |
| When | Within 90 Days Authority may Condone | Anytime After Time Fo Appeal is Over or After Disposal of Appeal | Any time |
| Condition | -- | Not Appealable or No Appeal made | New Material |

**Is the right of Appeal available against all orders with which the employee feels aggrieved?**

No. what are the orders against which appeal lies and otherwise. The same is as under:

As per Rule 12, no appeal lies against the following orders:

(a) any order made by the Governor;

(b) any order of an interlocutory nature or of the nature of a step-in-aid of the final disposal of a disciplinary proceeding, other than an order of suspension;

(c) any order passed by an inquiring authority in the course of an enquiry under Rule 7, the following orders are appealable:

i. an order of suspension made or deemed to have been made under rule 4;

ii. an order imposing any of the penalties specified in rule 3, whether made by the disciplinary authority or by any appellate or revising authority;

iii. an order enhancing any penalty, imposed under rule 3;

iv. an order which-

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

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

v. an order-

(a) stopping him at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;

(b) reverting him while officiating in a higher service, grade or post, to a lower service, grade or post, otherwise than as a penalty

(c) reducing or withholding the pension or denying the maximum pension admissible to him under the rules;

(d) determining the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof;

(e) determining his pay and allowances-

(i) for the period of suspension, or

(ii) for the period from the date of his dismissal, 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 to his service, grade or post shall be treated as a period spent on duty for any purpose.

**Who is the appellate authority?**

Appellate authority in various cases

has been mentioned in the Rule, 1999. Besides, the same may be specified by a general or special order of the Governor. In respect of cases not covered by the above, appellate authority has been prescribed under Rule 12 of the Rules, 1999 as under:

(i) where such Government servant is or was a member of a Statel Service, Group 'A' or Group 'B'

(a) to the appointing authority, where the order appealed against is made by an authority subordinate to it; or

(b) to the Governor where such order is made by any other authority;

(ii) where such Government servant is or was a member of a State Service, Group 'C' or Group 'D', to the authority to which the authority making the order appealed against is immediately subordinate

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

The appellate authority, on consideration of the appeal, shall either

(a) confirm, enhance, reduce, or set aside the penalty; or

(b) remit the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case

**What are the pre-requisites to be complied with before enhancing**

**the penalty?**

If it is proposed to impose a major penalty by way of enhancement, and an enquiry under rule 7 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 12, itself hold such enquiry or direct that such enquiry be held in accordance with the provisions of rule 7: In other cases relating to enhancement of penalty, a reasonable opportunity shall be given to the appellant of making a representation against the proposed penalty.

**What are the features of revision?**

Following of the features of revision:

(a) Revision is permissible in respect of orders

(i) from which appeal is allowed but was not made

(ii) no appeal is allowed

(b) Authorities mentioned in Rule 13 can carry out revision

(c) Power of revision may be exercised either suo motu or otherwise.

(d) UPSC will have to be consulted where necessary

(e) Revision cannot be commenced until

(i) the expiry of the period of limitation prescribed for appeal or

(ii) the disposal of appeal where appeal has been preferred

(f) Possible outcomes of revision are the same as that of appeal i.e. penalty may be confirmed, modified etc,

(g) The same steps are to be followed before passing order in the case of revision i.e. providing reasonable opportunity before enhancement of penalty, etc.

**Is there any time limit for revision?**

Rule 13 restricts the time for review in respect of Appellate Authority as six months from the date of the order proposed to be reviewed. In respect of any other authority for whom the powers of revision are conferred by the general or special order of the Governor, time limit will be as mentioned in the above order:

**What are the distinguishing features between review and revision?**

While the authorities competent to conduct revision are mentioned in Rule 13, power of review has been vested only with the Governor under Rule 14.

While revision can be carried out by on own motion or otherwise, there is a condition precedent for review viz. that it must be based on new material which could not be produced or was not available at the time of passing the order under review.

**What is the nature of new material which justifies review?**

Review will be justified only if the new material has the effect of changing the nature of the case.

**What are the possible outcomes of review?**

Rule 14 provides that under the conditions prescribed the Governor

may review any order. The scope of the power of review has not been elaborated. Hence it must be assumed hat President has full powers to pass appropriate orders in the matter. Proviso to Rule 14 makes it amply clear that the power, of review includes the power of imposing and enhancing penalty subject to provision of reasonable opportunity.

# ACTION ON RECEIPT OF COURT ORDERS

**What are the various court orders relevant to the context of disciplinary proceedings?**

Government Servants are likely to seek judicial intervention for the following purposes in matters relating to disciplinary proceedings:

(a) Revocation of suspension

(b) Enhancement of subsistence allowance

(c) Quashing of Charge Sheet

(d) Stay of the enquiry

(e) Setting aside the order of the Disciplinary Authority or Appellate Authority imposing penalty

**What action is required on the part of the Disciplinary Authority on receipt of court orders?**

Disciplinary Authority should check if the order is an interim order or a final order in the judicial proceedings. If it is an interim order, it must be checked as to whether it is ex-parte interim order or otherwise. In case of ex-parte interim orders, effort must be made to move the court to place before it the stand of the disciplinary authority and get the interim orders vacated, where necessary. In all cases, legal advice must be obtained about further course of action open to the department. In case any appeal is to be filed, urgent

action must be taken in that regard If there is a stay on the conduct of enquiry, the same must be complied with immediately; there is no bar, however to seek judicial remedy available under law.

**What is the time limit within which the court orders are to be implemented?**

Directions are to be implemented within the time limit stated in the judgment. If no time limit is mentioned in the order, the directions must be complied with as early as possible but within six months. In case there is any difficulty in complying with the time limit, extension of time must be sought from the court.

**What action is to be taken by way of implementation of a judicial order setting aside a penalty?**

Normally, when a penalty is set aside, the clock is to be put back. i.e. the status quo ante imposition of the penalty is to be restored. Further, if the employee has suffered any adverse impact due to currency of penalty, the same has to be removed with ante date effect. However, the action to be taken by the disciplinary authority depends upon the nature of the penalty set aside as explained hereunder:

(a) If a censure is to be set aside, necessary entries are to be made in the service records of the individual

(b) While implementing the judicial order setting aside the penalty of recovery of pecuniary loss, recovery if in progress should be stopped forthwith; past recoveries made, if any, must be refunded to the government servant. in case the court has

ordered the refund with interest if any, the same has to be calculated and refunded to the official.

(c) Withholding of promotion – in case the employee were due for promotion in the interim period and the same was denied because of the penalty order, promotion as due in the interim period must be granted with all consequential benefits such as pay fixation, grant of arrears of pay, etc.

(d) Withholding of increments – pay has to be revised by granting the increments on the due dates; arrears of salary admissible consequent to revision must be paid, together with interest if applicable.

(e) Reduction of pay to a lower stage- pay reduction has to be nullified; pay has to be regulated based on the pre-penalty scenario; arrears of salary admissible consequent to revision must be paid, together with interest if applicable.

(f) Reduction to a lower post or scale of pay or service. – pre-penalty scenario has to be restored and continued. Arrears of pay have to be disbursed to the employee together with interest if applicable.

(g) Compulsory retirement, Removal from service and dismissal- these three penalties are different from the others because, these penalties result in cessation of service of the charged officer. By way implementation of the judgment, the employee has to be reinstated in service, if he/she has not attained the age of superannuation. Interim period from the date of imposition of penalty to the reinstatement will

have to be regulated based on Financial Handbook Vol,-II Part II to IV.

(h) In addition to the above, in all cases where the penalty is set aside after the date of superannuation of the government servant, necessary revision of pension must be carried out.

(i) If the penalty of dismissal, removal from service or compulsory retirement is set aside retrospectively after the date of superannuation of the employee, the employee will be notionally re-instated in service and the service benefits including notional promotion, notional pay fixation, grant of arrears of pay, revision of pension and pensioner benefits, etc. will have to be granted in terms of the judgment.

(j) It is not uncommon for the courts to order reinstatement subject to the condition that the employee will not be entitled to arrears of salary or will be entitled only to part of the arrears say -50% and that the service in the interim period will qualify for certain specific purposes only. Such judgments will have to be suitably implemented in respect of retired or serving employees.

**What are the two different kinds of grounds under which the penalty may be set aside?**

The above penalties may be set aside

(a) For non-compliance of the constitutional /statutory provisions or principles of natural justice.

(b) On merits i.e. the charges have

not been proved or that the employee is free from guilt. While setting aside the penalty, the courts may or may not give liberty to the disciplinary authority to proceed against the delinquent official.

**What will be the position of the employee from the date of dismissal, removal from service or compulsory service till the date of re-instatement?**

Intervening period i.e. the period from the date of dismissal, removal from service or compulsory retirement to re-instatement shall be treated as deemed suspension under Rule 4 (6)(a). if the disciplinary authority decides to hold a further enquiry. Otherwise, the interim period will be treated as duty for all purposes under Financial Handbook Vol,-II Part II to IV.

**What are the two issues that call for determination on re-instatement of the employee consequent to the court orders?**

Following are the two issues which arise for determination on re-instatement of the employee:

(a) Treatment of the intervening period

(b) Pay and allowance for the period It has been clarified that the above two issues are independent, except that the competent authority has no discretion to pay full pay and allowance when the period is not treated as duty.

**How will the intervening period be treated?**

If the setting aside of the penalty is on merit, the intervening period will be treated as duty for all

purposes. On the other hand, if the penalty is set aside for non-compliance of statutory provisions and the exoneration is not on merit, the intervening period shall not be treated as duty unless the competent authority directs that to be treated as duty for any specific purpose. Financial Handbook Vol,-II Part II to IV. refers in this connection. The competent authority may however allow the period to be treated as leave if the Government servant so desires.

**What will happen to the period of suspension immediately preceding the dismissal, removal from service or compulsory retirement?**

In case the penalty is set aside on merit, the period of suspension immediately preceding the penalty will also be treated as duty for all purposes and full back wages will be paid under Financial Handbook Vol,-II Part II to IV. Note: It is significant that in case of reinstatement consequent to the orders of the appellate authority, even in cases where full payment is made for the post penalty period, proviso to Financial Handbook Vol,-II Part II to IV. makes a separate provision in respect of the period of suspension immediately preceding the penalty, depending upon whether the proceedings were delayed due to reason directly attributable to the employee. However, in the case of reinstatement on account of merit by virtue of court orders, such a question is not raised. The competent authority may however allow the period to be treated as leave if the Government servant so desires under Financial Handbook

Vol,-II Part II to IV.

**What is the pay and allowances admissible in respect of the cases, where the setting aside the penalty is on account of technical reasons (i.e. for non-compliance of the statutory provisions)?**

Under such cases where the setting aside is not on merit, the Government servant is not entitled for full pay and allowances. The competent authority will have to decide the pay and allowance admissible during the intervening period by issue of a notice indicating the proposed quantum and allowing time not exceeding 60 days for reply.

**What will be the situation if the employee was gainfully employed in the intervening period?**

The above stated payment shall be subject to adjustment towards the amount if any earned through an employment during the intervening period.

# SCOPE OF JUDICIAL SCRUTINY

**What is the scope of judicial intervention in the matter of disciplinary proceedings?**

In matters relating to disciplinary proceedings, the Courts as well as the Administrative Tribunals carry out judicial review. They do not act like an appellate forum.

**What is the difference between Judicial Review and Appeal?**

Scope of Judicial Review is confined to testing the legality of the process and outcome. On the other hand, an appellate forum verifies the correctness of the decision appealed against. In other words, Judicial Review pertains to the procedural issues while appeal relates to the substantive issues as well. Judicial Review is more about the method of arriving at a decision rather than the merit of the decision as such.



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