



VIGILANCE MANUAL

DISCIPLINARY PROCEEDINGS



HINDUSTAN AERONAUTICS LIMITED

VOLUME - II

प्रदीप कुमार
PRADEEP KUMAR



केन्द्रीय सतर्कता आयुक्त
केन्द्रीय सतर्कता आयोग
Central Vigilance Commissioner
Central Vigilance Commission
December 5, 2013

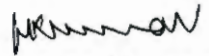


MESSAGE

I am glad to note that the Vigilance Department of Hindustan Aeronautics Limited (HAL) is bringing out an updated Vigilance Manual in four volumes incorporating the changes in guidelines and developments in vigilance administration.

An effective vigilance administration requires continuous capacity building of the vigilance functionaries and all other stake holders. Lack of clear understanding of rules, procedures and practices are often due to the absence of user friendly information in the form of compilations. I find that the earlier edition was brought out in December, 2009, and updation exercise to keep abreast with changes is welcome.

I congratulate the Vigilance Department of HAL for bringing out the updated Vigilance Manual which will not only be beneficial to the vigilance personnel but would also instil confidence in employees and other stake holders for better corporate governance in HAL.


(Pradeep Kumar)

डॉ. आर के त्यागी
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Dr. R K TYAGI
Chairman



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FOREWORD

Rules, regulations, procedures and guidelines need continuous as well as periodic updation to keep them in sync with dynamic reality. I am pleased to note the effort of the Vigilance Department of HAL to completely revise and update its Manual issued in November 2009 for the benefit of HAL Community. I find that the revised four volume edition comprehensively covers all the activities of the Vigilance Department. It includes all the current instructions on Vigilance administration issued by CVC, MOD and DOPT etc.

In HAL, 2013-14 has been the year for bringing all our guidelines up to date. Our Delegation of Powers, Procurement Manual, Works Manual, Recruitment Manual, Vigilance Manual etc. all reflect today's relativity and will help our executives to discharge their duties without fear or favour.

I complement Shri Anurag Sahay, IRS, CVO and his team of Officers for their timely initiative and contribution towards an effective and vibrant Vigilance administration in HAL.

14, January 2014
Bangalore - 560001


(RK Tyagi)

वी. एम. चमोला
निदेशक (मानव संसाधन)

V.M. CHAMOLA
Director (Human Resources)



हिन्दुस्तान एरोनाटिक्स लिमिटेड
HINDUSTAN AERONAUTICS LIMITED
मुख्यालय
Corporate Office



FOREWORD

Vigilance cannot be considered as an activity merely to prevent corruption. Considered holistically, it can acquire a more meaningful role. In fact, vigilance has to be seen as a part of the overall risk management mechanism of an organization whereby systems are structured in such a manner so as to prevent leakages even while making the organization transparent and accountable in its dealings with customers both internal and external.

The need of a Comprehensive Vigilance Manual has always been felt strongly so that all the relevant issues relating to a case could be examined in correct perspective and without a last minute pressure of locating the relevant instructions / guidelines here and there. Integrity of administration and honesty of officials manning it are indispensable factors to ensure good governance. The extent to which we can make our internal machinery effective and responsive to the customers depends on the sincerity and probity of the officials.

I am pleased to note that Corporate Vigilance has brought out the Vigilance Manual which consolidates various guidelines issued by the Central Vigilance Commission over the years and will be useful for carrying out the vigilance activities effectively. The Manual comprehensively covers all important aspects of Vigilance matters. The action plan for the vigilance functionaries in terms of inspections, investigations, various reports and returns have been compiled in great detail to enable effective functioning.

The current revised edition has been meticulously compiled by Vigilance department. I wish to place on record my appreciation for the initiative taken by Corporate Vigilance headed by Sri Anurag Sahay, IRS, CVO and his dedicated Team Members.

21 Feb 2014
Bangalore-560001

(V M CHAMOLA)
Director (HR)

के. नरेश बाबू
प्रबंध निदेशक

K. NARESH BABU
MANAGING DIRECTOR



हिन्दुस्तान एरोनाटिक्स लिमिटेड
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FOREWORD

“Nothing is permanent but change” goes the famous adage. Constant updating of various rules and procedures from time to time has manifold benefits to an organisation. It is an enabling tool to be equipped to face the myriad contemporary challenges and to remain ahead of the times.

Regular review and updating of policies and manuals is also a strong indicator of an organisation which is live and active, more so for an anti corruption entity like that of the Vigilance Department. It gives the double advantage. To the Department in specific, by ensuring delivery of professional anti corruption services and the organisation in general to meet the ethical requirements in the discharge of duties which is the cornerstone of good corporate governance.

I am therefore doubly delighted that Vigilance Department in HAL which is in the forefront of pursuing regular updating and reviewing of various Manuals and policies, is leading by example by publishing the revised Vigilance Manuals. I am sure that the efforts of the Department would help HAL to deliver quality products based on strong fundamentals of integrity and ethics.

I compliment Shri Anurag Sahay, IRS, the Chief Vigilance Officer and his team for this remarkable endeavour and wish the Department all the success in partnering the HAL to reach greater heights and realise the common goals and objectives.

12th Feb 2014

Bangalore-560017

(K Naresh Babu)

Managing Director (BC)

डॉ. ए. के. मिश्रा
निदेशक (वित्त)



Dr. A. K. MISHRA
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(Under Ministry of Defence,
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FOREWORD

It is pleased to note that the Vigilance Department has taken up the task to revise and update the present Manuals, which was updated and issued by the Vigilance Department during November 2009.

I am happy that Shri Anurag Sahay CVO HAL and his team have decided to bring out this revised Vigilance Manual. It is a tribute to the meticulous care and thoroughness with which they have brought out this Manual, within a short span of time.

I am sure this revised version will be found useful by all sections of our officers and employees. This would also be useful to Officers of Vigilance Dept, since details contained in this version would make the vital difference between knowledge of laws and implementation thereof to achieve the desired effect.

12th Feb 2014

Bangalore-560001

(Dr. A K Mishra)

Director (Finance)



FOREWORD

I am extremely happy to put on record that Vigilance Department has punctiliously revised the existing Vigilance Manuals. It is pleasure to share that HAL Vigilance Department in recent past, has taken innumerable initiatives to streamline vigilance related activities in the company.

Vigilance Manuals stipulating the legal and procedural framework is a 'sine qua non' for the efficient working of the Vigilance Department. Vigilance cannot be considered as an activity to merely prevent corruption. It does have a more meaningful role. In fact, Vigilance has to be seen as a part of the overall risk management mechanism of an organization whereby systems are structured in such a manner so as to prevent leakage even while making the organization transparent and accountable in its dealing with customers and stakeholders.

The objective of corruption free HAL cannot be done entirely by a small team of 40 plus Vigilance Officers. Undoubtedly, unless all stakeholders are involved in the process, effective Vigilance cannot be achieved. Every one working in their position, department have to come forward to fill the loopholes in the system.

To cull out all relevant circulars and guidelines in form of a manual is a laudable initiative. This is a major step towards bringing awareness of various Vigilance concepts and practices in the organization.

I am sure all the Manual would prove very handy to all employees in facilitating easy reference of various rules and regulations concerning vigilance related matters and would assist them in performing their duties and responsibilities in an efficient and vigilant manner.

I congratulate Shri Anurag Sahay, CVO and his team for bringing out this updated/revised manual.



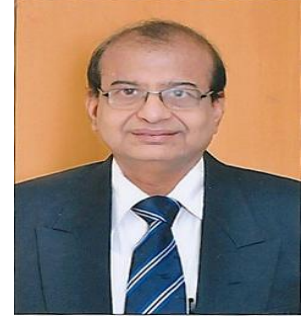
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Managing Director



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Hindustan Aeronautics Ltd.
मिग कॉम्प्लैक्स
MiG Complex



FOREWORD

I am pleased to note that the Vigilance Department has undertaken the task to revise and update the Vigilance Manuals issued by the Department during November 2009. This edition is contemporary which includes the current instructions on vigilance matters issued by the DOPT, CVC directives and company policies.

Creating awareness among public servants about rules and procedures, their underlying principles and purpose; and their correct application in practical situations would definitely increase the degree of adherence to these rules and procedures. I also find that the contents of the Vigilance Manuals are logically arranged in a very simple format to be used as reference.

I compliment Shri Anurag Sahay, IRS, CVO and his team of officers for their proactive initiative and positive contribution towards a more effective and vibrant vigilance administration.

(S. Subrahmanyam)
Managing Director

21st Feb 2014

Ojhar, Nasik – 422207

MiG Complex

अनुराग सहाय, भा.रा.से.

मुख्य सतर्कता अधिकारी

ANURAG SAHAY, I.R.S.

Chief Vigilance Officer



FOREWORD

It is a matter of great privilege for me to present before the HAL Community, a completely revised and updated Vigilance Manual. The present manual is released in four volumes,

| | |
|--------|---|
| Vol. 1 | Organisation & Policy |
| Vol. 2 | Disciplinary Proceedings |
| Vol. 3 | Technical Guidelines : Procurement, Contract & Services |
| Vol. 4 | Compendium Guidelines : CVC, MOD & HAL |

We have updated the Manuals in the light of our experience in Vigilance Administration since Nov 2009, i.e. the period of release of the last manuals. We have also endeavoured to include the latest guidelines, court decisions, and the various changes in Vigilance Administration in HAL, such as Online Vigilance Clearance System, System of Vigilance Sensitisation of Recruitment Committee etc.

We accord highest priority to creating vigilance related awareness in the Company. Through our various publications, we strive to create awareness amongst our executives of the rules, regulations and guidelines which outline the perimeter of our operations. I am confident that the new vigilance manual will be a useful guide, not only to the Vigilance functionaries, but also to all the officers and workmen of the Company.

CVC in its various articulations has stressed on the need for participative vigilance. I would urge HAL Community to refer to the Manual for guidance, and contribute their share in enhancing accountability and transparency in our decision making processes.

Jai Hind.

3rd March 2014


(Anurag Sahay, IRS)
Chief Vigilance Officer



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ABOUT THIS VOLUME

Discipline is the grammar of life. It is the virtue of an individual. Hence, to maintain a well knit, social order and cohesion, discipline is *sine qua non*.

In an Organisation, maintenance of discipline also requires initiation of disciplinary action which is on the punitive side as it is a process needs to be adhered in cases of indiscipline.

This Manual is concerned with elucidating the principles and procedure followed in conduct of departmental enquiries. Departmental enquiry proceedings is a branch of quasi-judicial proceedings and some fundamental principles of judicial proceedings are applicable. Though strict principles of C.P.C, Cr.P.C and Evidence Act are not applicable to departmental enquiries yet the fundamental principles embodied in them are applicable to departmental enquiries in so far as these are based on the principles of natural justice.

Utmost care has been taken to consolidate the laws as far as the procedure of departmental enquiry is concerned. Although law is developing faster but there is hardly any change in the basic structure of the machinery entrusted with the task of holding departmental enquiry and coming to a decision.

Special efforts have been made to ensure that all important aspects are properly understood, analyzed and presented in such a way as to enable easy reference to the subject matter. Extracts have been given from important decisions of the Supreme Court and High Courts, for a better appreciation of the principles of law contained in those decisions. Whenever necessary, the relevant provision of the IPC, Evidence Act has been quoted for immediate reference.

The Manual brings out the guidelines on disciplinary proceedings which officials dealing with the disciplinary matters, should know to correctly and effectively deal with such cases. Its objective is to supplement rather than substitute the provisions contained in the HAL Conduct, Discipline and Appeal Rules, 1984 or in the Certified Standing Orders of various Divisions. If there is any variation between the guidelines in the Manual and the provisions of CDA Rules/Standalng Orders, the provisions of the CDA Rules/Standalng Orders shall have effect. In case of any clarifications regarding the contents of this Manual, the same has to be referred to the CVO, Corporate Office, HAL, Bangalore.

Abbreviation used in this Manual

HAL; Hindustan Aeronautics Limited
CDA Rules: Conduct Discipline and Appeal Rules, 1984
IO: Investigating Officer
HOD: Head of Department
DEC: Departmental Enquiry Committee
DA: Disciplinary Authority
EO: Enquiry Officer
I.A.: Inquiring Authority
P.O.: Presenting Officer
C.O.: Charged Officer
CSE: Charge sheeted Employee
P.H.: Preliminary Hearing
B.H.: Brief hearing
R.H.: Regular Hearing
DOS: Daily Order Sheet
SOI: Statement of Imputation.
CVC: Central Vigilance Commission
CBI: Central Bureau of Investigation
CCS (CCA) Rules: Central Civil Services (Classification, Control, and Appeal) Rules 1965
PE: Preliminary Enquiry
RC: Regular Case
FIR: First Information Report
SC: Supreme Court

Major sources of the Manual

1. CVC Act : 2003
2. Vigilance Manual (New) : Central Vigilance Commission 2005
3. CVC Manual (Old) : Central Vigilance Commission 1991
4. CVC Circulars : Central Vigilance Commission
5. HAL Circulars : Hindustan Aeronautics Limited
6. DOPT Circulars : Ministry of Home
7. Sp. Chapter on Vig. Management
in Public Sector Enterprises : Central Vigilance Commission
8. CCS(CCA) Rules : 1965
9. HAL CDA Rules : 1984
10. Constitution of India : 1950
11. Vigilance Professional (Journal) : AAPSS, Hyderabad
12. Law and procedure of
departmental enquiries : BR Ghaiye
13. Administrative Law : L P Massey
14. Rules and law of Suspension : G B Singh
15. All India Reporter : Nagpur
16. Supreme Court Cases : EBC, Lucknow
17. Hand book for Inquiry Officer
And Disciplinary Authority 2013 : DOPT

N B: - The term 'employee' used in this Manual includes both workmen and Officers.

CHAPTER I

DISCIPLINE & DISCIPLINARY PROCEEDINGS

***“Without discipline we can solve nothing,
With only some discipline, we can solve only some problems,
With total discipline, we can solve all problems”***

- **M. Scott Peck - 1978**

1.1 Need for Discipline:

Human resource is the most valuable asset of any organisation. It is this resource through which other resources in the organisation are exploited utilized so as to achieve the organizational objectives. Human being cannot exist or work together unless they accept rules of discipline of their own making or have rules imposed upon them by power of absolute Government.

In modern technological society creation & management of wealth depends on productivity and creativity of industry, which in turn must have the normality of order that is based on positive and co-operative discipline to remain competitive and retain existence. The real issue in the globally competitive scenario of 21st century will not be just deployment of superior technology or highly qualified personnel, but more importantly it will be effective management of employees' behavior and morale.

1.2 What is Discipline?

The expression 'discipline' has been derived from the term 'disciple' which means learner or follower i.e. one who takes another as his teacher or leader. Discipline is training of mind and the character to produce self control. In the broad sense, discipline means an orderly and systematic behavior, which is opposite of confusion.

Discipline is defined as behaviour in accordance with rules of conduct or which is proper and socially acceptable. It is constructive and positive force that enables the people to work harmoniously.

Individual discipline means - everybody knows his job and each individual works co-operatively with the group, in such situation they themselves enforce the rules of discipline. Group discipline is accomplished when members of one group and its leaders have mutual goals to achieve by collective efforts for which they adopt the code of conduct.

The implied condition of master & servant relationship is that, a servant must obey the lawful orders of his master & discharge the duties allotted to him faithfully and to the satisfaction of the master.

A servant is expected to follow an orderly and prescribed conduct, which is generally, understood as discipline. Discipline implies that person should behave with propriety & decorum. When there is violation of propriety & decorum, it is misconduct.

1.3 Some Steps towards Positive Discipline

Step I: Policy statement on discipline

Spell out in clear terms the policy on employee / employer relationship including discipline. On absence of this, it will be difficult for the junior / middle management Officers to take proper / appropriate decisions. Moreover in absence of such policy, changes in top Management means shifts in unwritten, uncommunicated policy of management.

Step II: Rules and Regulations

Rules are designed to promote a constructive work environment; protect the health and welfare of employees as well as of organisation and assure protection to individuals.

The rules are no longer established at the discretion of management but some are embodied in Central / State Govt.

The principles of 'Rule Making' which are fundamental to the success of positive discipline are -

- a) Rules must be reasonable.
- b) It must spell out clearly what is expected from employee under the rules.
- c) Employees must have faith and give recognition to the rules framed.
- d) Rules must be applied consistently.
- e) Updation of Rules on need basis

Step III: Enforcement of Rules

Enforcement of rule should not be very harsh nor very lax and lenient. Wide disparity should be avoided by being more objective in approach.

The traditional pattern of management is based on theory that average men avoid / dislike work, he prefers to be directed, avoids responsibility, has little ambition but wants security. This theory advocated by Douglas McGregor is known as Theory 'X'. In recent time a contrasting theory based on belief that effective way to get the work done is to work with people rather than through people. This other theory is known as Theory 'Y' which presumed that average human being does not dislike work, he is not lazy, for him work would be source of satisfaction performed voluntarily without being supervised constantly.

If the person is committed to objectives he will exercise self-control and self-direction. This theory Y emphasizes managerial approach based on principles of mutual responsibility with shared objective and independence / freedom of work.

The difference between the two theories is in their assumptions of human behaviour and significant differences in leadership patterns.

1.4 Misconduct

When we talk of disciplinary proceedings or the rules thereof, the first question that naturally arises is as to what is meant by misconduct and what are the misconducts that would attract disciplinary action?

'Misconduct' has not been defined in any rules or in any statutory instrument. In law Lexicon 'misconduct' has been defined to be 'transgression of some established rule of action where 'no discretion is left'. In Butts 'Law of Master and Servant, it has been similarly defined and, in addition, it is stated to be a 'Violation of definite law – a forbidden act'. In Strounds Judicial Dictionary 'misconduct' has been defined to be a 'conduct arising of ill motive'.

The good governance demands observance of the said rules by the employees not only in the discharge of their official duties but also in their conduct and character while dealing with the general public as also in their social and private life. Though the term misconduct has not been defined in any of the Conduct Rule or the standing order or in any enactment, however attempts have been made by courts to explain the term In **Union of India v/s J Ahmad**¹ the Supreme Court has observed that **'a conduct which is blameworthy for the Government Servant in the context of conduct rules, would be misconduct and if a Government Servant conducts himself in a way inconsistent with the due and faithful discharge of his duty, it is misconduct'**.

In simple words we can define the term misconduct as an act a man does what he is not expected to do or does not do what he is expected to do. It is an omission where he is expected to do a work or commission where he is expected to refrain.

1.5 Kinds of misconduct:

Misconduct could be of three kinds:

- (1) Technical Misconduct which leaves no trail of indiscipline;
- (2) Misconduct resulting in damage or loss to the employer's property or reputation
- (3) Serious Misconduct such as acts of violence against the management or other employee or riotous or disorderly behavior in or near the place of employment, which though not directly causing damage, is conducive to grave indiscipline.

1.6 Test to decide whether an act amounts to misconduct for institution of departmental proceeding

If the act or omission is such that it reflects on the reputation of the officers for his integrity or good faith or the devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for activities which has nothing to do with the master and servant relationship. The test is not whether the act or omission is committed in the course of the discharge of his duties as servant but the test is whether it has any reasonable connections with the nature and conditions of service or whether it would cast any reflection upon the reputation of the member of the service for integrity or devotion to duty as a public servant². If a Servant conducts himself in a way which is inconsistent with the faithful discharge of his duties in service, it is misconduct. Disregard of essential condition of the contract of service may constitute misconduct.

Coming late for duties, negligence in performance of duties, slowing down the assigned work, riotous and indecent behaviour & other misconducts are included in the Standing orders.

¹ AIR 1979 SC 1022

² S. Govinda Menon Vs Union of India AIR 1967 SC 1274

Some actions are specifically mentioned as misconduct in the Government Servants Conduct Rules, 1956. Rule 3 of these rules is important and it may be worthwhile to pause over it. Rule 3 reads:-

- a) Every Government Servant shall at all times maintain absolute integrity and devotion to duty;
- b) Every Government Servant shall at all time conduct himself in accordance with specific or implied orders of Government regulating behaviour and conduct which may be in force.

The rule would appear to be couched in very wide terms. The expressions 'at all times' and 'implied orders of the Government' are important and have been held to mean that misconduct even in private life may be misconduct for the purpose of disciplinary action.

The relevant provisions and procedure for departmental inquiries are contained in the Constitution and under various disciplinary proceedings rules and in the principles of natural justice.

1.7 Disciplinary proceedings:

Misconduct, or non-confirming 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 proceed 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 are generally conducted by the state agencies, are time consuming and call for a higher 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 the displeasure to the severance of the employer-employee relationship i.e. dismissal from service. There was a time when the employer was virtually free to hire and fire his 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 Union Government and State Governments should conform to these Constitutional provisions, which confer certain protection on the Government servants. These provisions are applicable only to the employees of the various Ministries, Departments and Attached and Subordinate Offices. In addition to the constitutional provisions, there are certain rules which are applicable to the conduct of the proceedings for taking action against the erring employees. Central Civil Services (Classification, Control, and Appeal) Rules 1965 covers a vast majority of the Central Government employees. Besides, there are also several other Rules which are applicable to various sections of the employees in a number of services.

(b) **Semi Government Organisations:** By this we mean the Public sector Undertakings and Autonomous Bodies and Societies controlled by the Government. Provisions of Part XIV of the Constitution do not apply to the employees of these Organisations. However, as these

organisations can be brought within the definition of the term 'State' as described in Article 12 of the Constitution, the employees of these organisations are protected against the violation of their Fundamental Rights by these organizations 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.

Officers in HAL are governed by HAL CDA Rules 1984, notified vide Personnel Circular No. 528 dated 23.8.1984. These Rules have been drafted on the Model Conduct, Discipline and Appeal Rules framed by the Central Vigilance Commission for adoption by PSUs. Workmen in HAL are generally covered under the certified standing orders framed inline with the model prescribed in the Industrial Employment (Standing Orders) Act, 1946.

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

1.8 Although the CCS(CCA) Rules 1965 applies to 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 Constitutions are the codification of the above Principles. Hence, the procedures which are followed in most of the Government and semi-governmental organisations are more or less similar.

1.9 Difference between Judicial Proceedings and Disciplinary Proceedings is placed at Appendix "A"

CHAPTER - II

THE CONDUCT RULES

“In all governments, there must of necessity of both the law and the sword; laws without arms would give us not liberty, but licentiousness; and arms without laws, would produce not subjection, but slavery. The law, therefore, should be unto the sword what the handle is to the hatchet; it should direct the stroke and temper the force.”

- Charles Caleb Colton,

2.1 HAL Conduct, Discipline and Appeal Rules 1984:

The employees of public sector undertakings, which have been constituted as corporate bodies and constitute separate legal entities under the relevant statutes or which have been registered as companies under the Companies Act are not Government servants. They are governed by rules and regulations made by the respective undertakings under the powers vesting in them under the relevant statutes / Articles of Memorandum.

HAL Conduct Rules and HAL Disciplinary Action Rules introduced in 1967 (as amended from time to time) governed the matters relating to conduct and discipline of employees of HAL. Employees covered by the Industrial Employment (Standing Order) Act were dealt under the Certified Standing Orders of respective Divisions/Factories.

With the introduction of the HAL CDA Rules, with effect from 1st September 1984, all Officers in Grade I and above in the Company are governed by the said Rules (as amended from time to time). However other employees (in workmen cadre), working in Corporate Office, Liaison Offices, Staff College (now HMA) who are not covered by the Standing Orders, continue to be governed by the HAL Conduct Rules and HAL Disciplinary Action Rules 1967.

HAL CDA Rules 1984, notified vide Personnel Circular No. 528 dated 23.8.1984 have been drafted on the Model Conduct, Discipline and Appeal Rules framed by the Central Vigilance Commission for adoption by PSUs, as notified by Government vide BPE OM No. 2(121)/73-BPE(GM-I) dated 26.4.1974³ as well as keeping in view the provisions of the HAL Conduct Rules and HAL Disciplinary Action Rules introduced in 1967 (as amended).

The matters relating to Conduct and Discipline of employees of HAL are, accordingly dealt with under the respective Rules/Certified Standing Orders.⁴

³ At the Conference of the Chief Executives of public sector undertakings held at New Delhi in June 1973, it was decided that a Working Group to review the existing Rules of Public Undertakings regarding conduct and discipline procedures should be set up with a view to frame a model set of Conduct and Discipline Rules for the employees of the public sector undertakings. The recommendation was accepted by the Central Vigilance Commission and in consultation with BPE, Department of Personnel, a Working Group comprising of the representatives from different organisations was set up to frame a model set of Conduct and Discipline Rules which could be adopted by the Public Enterprises. The working Group submitted its Report, which contained a model set of Rules which could be adopted by the Public Enterprises while framing their Conduct and Discipline Rules.

⁴ A Certified Standing Order is framed on the Model Standing Order provided under the Industrial Employment (Standing Order) Act, 1946. The Act requires for such Standing Order in an establishment which consists more than 100 workmen. The terms and conditions of service are negotiated between trade union and the management

HAL CDA Rules also apply to Officers on contract and Govt. employees on deputation other than those appointed by the President of India and Armed Services personnel.

HAL CDA Rules 1984 contains, inter alia,

- a. Code of conduct- Rule 4 read with schedule - I
- b. Act which would be deemed to be misconduct - Rule 5

Any breach of Code of conduct as stipulated in Rule 4(read with schedule I) or commission of misconduct as stipulated in Rule 5 would make the employee liable for disciplinary action as per the procedure prescribed in Schedule II.

Rule 10 empowers the competent Disciplinary Authority⁵ (as designated in Appendix I of the CDA Rules) to award minor/ major punishment. The minor & major punishments have been defined under Rule 6 (i) & 6(ii) respectively⁶.

Rule 14 and 16 envisage the provisions of Appeal (by the aggrieved officer) and Review (by the Appellate Authority suo moto) on the final order of the said Disciplinary Authority

Necessary Jurisdiction, for removal of doubt regarding interpretation of or amending, the Rules vest with the Board of the Company.

2.2 Certified Standing Order:

The Industrial Employment (Standing Orders) Act, 1946 provides that the employer may frame standing orders laying down the terms and conditions of service of the workmen on some important matters and so long as such standing orders are not framed the terms and conditions of service will be governed by the model standing orders mentioned in the rules framed under the Industrial Employment (Standing Orders) Act, 1946. The standing orders, therefore, amount to a statutory contract between the parties. When the standing orders are certified they bind not only all existing workmen in employment but also all workmen who may be employed in future⁷. Thus the standing orders amount to a statutory contract between the parties as against agreed to by both the parties⁸. It is also now well established that parties cannot enter into a contract inconsistent with the provisions of the standing orders⁹.

whereupon the same is certified by the certifying officer designated as per the Act, and it becomes Certified Standing Order.

⁵ HAL/P&A/19(2)/2005 dt 7/2/2005

⁶ HAL/P&A/19(2)-Vol.VI-PF/2005/79/2400 dt 19/02/2005

⁷ An act outside the premises of the establishment will; constitute misconduct, generally, under the following circumstances:

- a) If the act is inconsistent with the fulfillment of express or implied conditions of service or
- b) If the act is directly linked with the general relationship of employer and employee or
- c) If the act has a material bearing on the smooth and efficient working of the establishment.

In short, the misconduct committed outside the premise should have a 'nexus' with the employment.

⁸ A.K Roy vs Union of India, 1982 1 SCC 271

⁹ G. Krishna Singh vs Hindustan Aeronautics Ltd., 44 FJR 349

In **Luxmi Precision vs Ram Bhagat**¹⁰ it has been held by the Supreme Court that “one ought to read the doctrine of natural justice being an inbuilt requirement of the standing orders”.

The standing Orders define and settle the terms and conditions of employment of the employees. These include:

- a) Classification of workmen e.g. permanent, temporary, apprentice, probationers or badlee.
- b) Entry and exit of workmen and liability to search.
- c) Manner of intimating hours of work, holidays, pay days and wage rates.
- d) Shift working, leaves, Holidays, and change of address.
- e) Attendance and late coming.
- f) Duties and obligations of workmen during working hours.
- g) Stoppage of work.
- h) Essential services.
- i) Termination or employment and payment at termination.
- j) Acts of misconduct.
- k) Punishment for misconduct.
- l) Suspension pending enquiry and subsistence allowance.
- m) Age for superannuation, medical examination etc.
- n) Any other matter which may be prescribed.

2.3 Common misconducts applicable to officers/workmen of the Company is placed at Appendix 'B'

¹⁰ 2002(95) FLR 43

CHAPTER - III

PRINCIPLES OF NATURAL JUSTICE

“There is but one law for all, namely, that law which governs all law, the law of our Creator, the law of humanity, justice, equity -- the law of nature and of nations.”

- **Edmund burke**, speech on Impeachment of Warren Hastings, May 28, 1794

3.1 The concept and evolution:

The Principles of Natural Justice can be put as vocate (call), interrogate (question) and judicate (decide judiciously). The sum and substance of natural justice is notice, reasonable opportunity for defence, unbiased consideration of the submission and solemn judgment.

Though there is no statute laying down the minimum procedure which administrative agencies must follow, while exercising decision making power, sometimes, the statute under which the administrative agency exercise power lays down the procedure which the administrative agency is left free to devise its own procedure. However, the Courts have always insisted that the administrative agencies must follow minimum of fair procedure. This minimum fair procedure refers to the principles of natural justice. Natural justice is justice based on human values and good conscience following a just and fair procedure. These are principles analogous to principles of justice, equity and good conscience.

The test to decide whether Principles of natural justice have been violated or not is whether there is such a manifest failure of justice to shock the conscience of a reasonable person. These principles are vital to ensure justice and give due protection to an employee whose conduct is under consideration as they are deemed to govern the procedure of departmental enquiries even though not provided for.

3.2 Constitution and Principles of Natural Justice:

In the Constitution of India there are some rights which are recognized as fundamental rights and they are described in Part III of the Constitution. The fundamental rights are applicable against the State. Though the Principles of Natural Justice are not treated as Fundamental Rights yet it may not be entirely out of context to stress here that Article 14 of the Constitution of India guarantees equality before law and protection against any discrimination by any law. Any act of arbitrariness is discursively a form of discrimination and as such this would tantamount to transgression of Article 14. Since the Principle of Natural Justice also forbid arbitrariness, in a way violation of principles of Natural Justice would also mean violation of Article 14 of the Constitution.

3.3 Principles of Natural Justice and Departmental Enquiries

The proceedings before the Civil Court are governed by the Civil Procedure Code and the proceedings before the criminal courts are governed by the Criminal Procedure Code. Both the codes have detailed guidelines how a civil or criminal court should act in different contingencies. As far as the departmental enquiry is concerned no such detailed guidelines are usually available.

The reason why the doctrines and procedure applicable to a Court of Law are not applicable to quasi-judicial proceedings is due to difference in the functions of the two bodies. The climate of the court, the pattern of judicial procedure, the judicial environment and the anatomy of judicial process are all basically different from those of the administrative court, the administrative agencies, the administrative process and the administrative technique. The quasi-judicial authorities are not bound to follow the procedure of courts or strict rules of evidence and therefore they can obtain information material for enquiry in any way provided they give a fair opportunity to the employee to explain the same.

The principles of natural justice are applicable to all quasi-judicial proceedings. The test to determine whether the act of a body may be said to be quasi-judicial or not is that the body must have legal authority to determine questions affecting the rights of the parties and it must have the duty to act judicially.

3.4 The principles

There are four basic well understood and established principles of natural justice that are meant to be minimum protection of the rights of individuals against arbitrary procedures, may it be judicial or quasi-judicial.

1. *Nemo Debat Esse Judex in Propria Causa*: No one should be judge of his own cause; **Rule against Bias.**
2. *Audi Alteram Partem*: No one should be condemned unheard. **Right to be heard.**
3. *Uberima Fide*: Speaking Order. **Reasoned Decision**
4. **Decision in good faith.**

3.5.1 Rule against Bias:

Bias means an operative prejudice whether conscious or unconscious in relation to a party or issue. Therefore, the rule against bias strikes against those factors which may improperly influence a judge in arriving at a decision in any particular case. The requirement of this principle is that the judge must be impartial and must decide the case objectively on the basis of the evidence on record. A person cannot take an objective decision in a case in which he has an interest for, as human psychology tells us, very rarely can people take decisions against their own interests.

Central Vigilance Commission too has advised that the members of the Tender Committee should give an undertaking at the appropriate time, that none of them has any personal interest in the Companies/Agencies participating in the tender process. Any member having interest in any Company should refrain from participating in the Tender Committee.¹¹

¹¹ CVC Office Order No 71/12/05 dt 09/12/2005

The Disciplinary Authority acts like a judge. He takes administrative action with a judicial approach, which requires administration of justice according to rules, following just and fair procedure. He shall be independent, impartial, fair and objective. A person with a foreclosed mind or a person who has prejudged the issue or predetermined to punish the delinquent should not act as inquiry officer. Similarly a person who is a complainant, or witness or prosecutor cannot act as a judge.

However the bias in disciplinary proceedings must be a real possibility as to a reasonable mind and not merely an apprehension, suspicion or surmise based on no material worth consideration.¹²

There are different facets of Bias which may affect the decision in variety ways.

a. Personal bias

It arises from a certain relationship equation between the deciding authority and the parties which incline him unfavourable or otherwise on the side of one of the parties before him. In case of allegation of such bias, it should be examined whether there is reasonable likelihood of apprehension of not getting fair trial as was defined by Supreme Court in **S. Parthasarathy vs State of Andhra Pradesh**¹³.

b. Pecuniary bias

It envisages that any financial interest, howsoever small it may be, would vitiate administrative action. While ownership or share holding qualifies for pecuniary bias, mere trusteeship of society does not.

c. Subject-matter bias

Those cases fall within this category where the deciding officer is directly, or otherwise, involved in the subject-matter of the case. Here again mere involvement would not vitiate the administrative action unless there is a real likelihood of bias. For instance someone who could be examined himself as witness should not be the inquiry officer.

d. Preconceived notion bias

Bias arising out of preconceived notions is another disqualification. However unless the strength of the preconceived notions is such that it has the capacity of foreclosing the mind of the judge, administrative action would not be vitiated.

¹² Tarit Kumar Talukdar vs Commissioner of Police, 1979 SLR 625 Cal

¹³ AIR 1973SC 2701. The Honorable Court held, "The test of likelihood of bias which has been applied in a number of cases is based on the reasonable apprehension of a reasonable man fully cognizant of the facts. The tests of "real likelihood" and "reasonable suspicion" are really inconsistent with each other. The reviewing authority must take a determination on the basis of the whole evidence before it whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from the principles that justice must not only be done but seem to be done. If right-minded persons would think that there is real likelihood of bias on the part of an enquiry officer, he must not conduct the enquiry; nevertheless there must be a real likelihood of bias. Surmise or conjecture would not be that the inquiring officer will be prejudiced against the delinquent. The court will not enquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision.

In case of bias, the cardinal principle is that the question/doubt of bias should be raised at the first instance. Objections raised later are likely to be overruled.

3.5.2 Right to be heard:

The expression *audi alteram partem* simply implies that a person must be given an opportunity to defend himself. This principle is sine qua non of every civilized society.

“The laws of God and man both give the party an opportunity to make his defence, if he has any”.¹⁴

Art.311 (2) of the Constitution of India embodies the principles of reasonable opportunity. It reads as follows:

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

Thus Article 311(2) makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The procedure to be followed in awarding other punishments is laid down in the service rules governing the employee. Whenever, therefore, the service rules contemplate an inquiry before punishment is awarded, and when the Inquiry Officer is not the disciplinary authority the delinquent employee will have the right to receive the Inquiry Officer's report notwithstanding the nature of the punishment.¹⁵

a. Right to Notice: The Charge sheet

Notice is the starting point of any hearing. The object of issuing a charge sheet is to give opportunity to the Employee who is charged with misconduct to offer his explanation to defend himself. The rules of Natural Justice require that person charged should know the nature of the misconduct with which he is charged and should be given an opportunity to defend himself and to give a proper explanation. Otherwise he cannot defend himself. The adequacy of notice is a relative term and must be decided with reference to each case. But generally a notice in order to be adequate must contain the following:

1. Time, place and nature of hearing.
2. Legal authority under which hearing is to be held.
3. Statement of specific charges which the person has to meet.

The test of adequacy of notice will be whether it gives sufficient information and material so as to enable the person concerned to put up an effective defence.

¹⁴ Byles, J. in *Cooper vs Wandsworth Board of works* 1861 All ER Rep Ext 1554. The Bible recites the story of Adam, who ate the forbidden (knowledge) fruit apple, at the instigation of Eve. God had forbidden the first man and first woman to eat it. However when He came to know of the event, He did not straightway punish Adam and Eve. Instead He called both of them and gave an opportunity to explain their stand. God asked them, "Adam, Where art thou; Hast thou eaten the fruit of the tree where I commanded thee that thou shall not eat?" And the same question was put to Eve also. Moral of the story is that God, the almighty, adhered to the Principles of Natural Justice and did not think it proper to condemn them without being heard.

¹⁵ *MD, ECIL, Hyderabad vs B. Karunakar* AIR 1994 SC 1074

b. Right to present his case and evidence

The adjudicatory authority should afford reasonable opportunity to the party to present his case.

In **A.K.Roy vs Union of India**¹⁶ the Supreme Court held that if the detenu desires to examine any witnesses, he shall have to keep them present at the appointed time and no obligation can be cast on the Advisory Board to summon them. The Board can also limit the time within which the detenu must complete his evidence.

Hon'ble Supreme Court had an opportunity to deal with the above matter in detail in the case of **Chandrama Tewari vs. Union of India**¹⁷ wherein following guidelines were issued.

- a. Copy of the documents, if any, relied upon against the party charged, should be given to him and he should be afforded opportunity to cross-examine the witnesses and to produce his own witnesses in his defence. If findings are recorded placing reliance on a document which may not have been disclosed to him or the copy whereof may not have been supplied to him during the enquiry when demanded would contravene principles of Natural Justice rendering the enquiry and the consequential order of punishment illegal and void.
- b. It is not necessary that each and every document must be supplied to the delinquent Government Servant facing the charges. Instead, only material and relevant documents are necessary to be supplied to him. The obligation to supply copies of a document is confined only to material and relevant documents and the enquiry would be vitiated only if the non-supply of material and relevant documents when demanded may have caused prejudice to the delinquent official.
- c. A delinquent official is entitled to have copies of material and relevant documents only, which may include the copy of statement of witnesses recorded during the investigation or preliminary enquiry or the copy of any other documents which may have been relied in support of the charges.
- d. If a document has no bearing on the charges or if it is not relied upon by the inquiry officer to support the charges, or if such document or material was not necessary for cross-examination of witnesses during the inquiry, the officer cannot insist upon the supply of documents, as the absence of copy of such document will not prejudice the delinquent official.¹⁸

C. The right to rebut adverse evidence

The right to rebut adverse evidence presupposes that the person has been informed about evidence against him. It is sufficient if the summary of the contents of the adverse material is made available provided it is not misleading¹⁹. The opportunity to rebut evidence necessarily involves the consideration of two factors: cross-examination and legal representation.

i) Cross-examination

¹⁶ 1982 1 SCC 271

¹⁷ AIR 1988 S.C.117

¹⁸ P.V.Ramakrishna, Vigilance Professional VOLUME II, NUMBER 3 APRIL – JUNE 2002

¹⁹ City Corner vs P.A to Collector and Addl. Magistrate, 1976 1 SCC 124

The right of cross-examination by the Charged Employee as an ingredient of fair hearing has been decreed by the Supreme Court.

ii) Legal Representation

Normally representation through a lawyer in any administrative proceeding is not considered an indispensable part of the rule of natural justice as oral hearing is not included in the minima of fair hearing²⁰.

D. No evidence should be taken at the back of other party:

The statements taken in the absence of the other party, without affording an opportunity to rebut, is against the recognized principles of natural justice. Whatever information is obtained by the administrative authority must be disclosed to the other party and an opportunity to rebut it must be provided.

E. Report of the enquiry to be shown to the other party:

The question came before SC in **Managing Director, ECIL, Hyderabad vs. B. Karunakar**²¹ and the Supreme Court issued the following guidelines

- i. that when the Inquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the Inquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges leveled against him and a denial of the right amounts to a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of Natural Justice.
- ii. that the statutory rules, if any, which deny the report to the employee are against the principles of Natural Justice and therefore invalid. The delinquent employee will, therefore be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.
- iii. that it will not be proper to construe the failure on the part of the delinquent employee to ask for the inquiry report as the waiver of his right and whether the employee asks for the report or not, the report has to be furnished to him.
- iv. that this rule is applicable to employees in all establishment whether Government or non-Government, public or private, whether there are rules governing the disciplinary proceedings or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject.
- v. that in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to aggrieved employee if he has not already secured it before coming to the Court / Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If, after hearing the parties, the Court / Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court / Tribunal should not interfere with the order of punishment and should not mechanically set aside the order of punishment on the ground that the report was not furnished. It is only if the Court / Tribunal finds that the furnishing of the report would

²⁰ N. Kalindi vs Tata Locomotive and Engg. Co., AIR 1960 SC 914

²¹ AIR 1994 S.C.1074

have made a difference to the result in the case that it should set aside the order of punishment.

3.5.3 Reasoned Decision:

The third principle of Natural Justice states that the final orders passed should be a speaking order. It is applicable both to the inquiry officer as well as the disciplinary authority – while submitting the inquiry report by the EO and while passing the penalty order or otherwise by the D.A. A speaking order is one, which specifies the reasons for reaching the conclusions.

The condition to give reasons introduces clarity and excludes or at any rate minimizes arbitrariness. A reasoned order is a desirable condition of judicial disposal.²²

The requirement that reasons be recorded governs the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It is however not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.²³

3.5.4 Decision in good faith:

Judges, like 'Caesar's wife', should be above suspicion. It implies that the judge is impartial and without any interest. It further envisages that justice should not only be done but should manifestly appear to have been done. It implies that the judge has accorded due consideration to the evidence before him by not just counting the evidence but by weighing it and that he has arrived at decisions without indication of any favour to either of the parties during trial or inquiry.

In the case of **Ashok Kumar Yadav vs State of Haryana**²⁴ it was held as under;

"It is one of the fundamental principles of our jurisprudence that no man can be a judge in his own cause and that if there is a reasonable likelihood of bias it is "in accordance with natural justice and commonsense that the justice likely to be so biased should be incapacitated from sitting". 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

²² Bhagat Raja v. Union of India AIR 1967 SC 1606. The Hon'ble Court held that... If tribunals can make orders without giving reasons, - the said power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of power. But if reasons for an order are given, it will be all effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant consideration will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard. An executive officer generally looks at things from the standpoint of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to change from function to function or from act to act. So it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties, and the least they should do is to give reasons for their orders.

²³ S.N. Mukherjee vs Union of India AIR 1990 SC 1984

²⁴ AIR 1987 SC 454

decision. 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.”

3.6 Need for self-contained speaking and reasoned order to be issued by the authorities exercising disciplinary powers.

It is a well-settled law that the disciplinary/appellate authority is required to apply its own mind to the facts and circumstances of the case and to come to its own conclusions, though it may consult an outside agency like the CVC.

There have been some reported cases in which the orders passed by the competent authorities did not indicate application of mind, but a mere endorsement of the Commission's recommendations. In one case, the competent authority had merely endorsed the Commission's recommendations for dropping the proposal for criminal proceedings against the employee. In other case, the disciplinary authority had imposed the penalty of removal from service on an employee, on the recommendations of the Commission, but had not discussed, in the order passed by it, the reasons for not accepting the representation of the concerned employee on the findings of the inquiring authority. Courts have quashed both the orders on the ground of non-application of mind by the concerned authorities.

Thus the Disciplinary Authorities should issue a self-contained, speaking and reasoned orders conforming to the aforesaid legal requirements, which must indicate, *inter-alia*, the application of mind by the authority issuing the order^{25, 26}.

3.7 EXCEPTIONS TO THE RULE OF NATURAL JUSTICE

Though the rules of natural justice have definite meaning and connotation in law and their content and implication are well understood and firmly established, they are nonetheless not statutory rules. Not only can the principle of natural justice be modified but in exceptional cases they can even be excluded. It is as much in public interest and for public good that employee who are inefficient, dishonest or corrupt or have become a security risk should not continue in service. Constitution of India as well as relevant service rules provide for such exceptions.

Furthermore these rules can operate only in areas not covered by any law validly made. Where disciplinary rules contain clear provisions about the conduct of inquiries at various stages, the rules of natural justice should not be invoked for going beyond or round the scope of the rules at any stage.

²⁵ CVC letter No. 003/DSP/3 Dt, 15th September 2003

²⁶ CVC letter No. 02/01/09 Dt, 15th January 2009

CHAPTER – IV

SUSPENSION

“The purpose of the law is not to prevent a future offense, but to punish the one actually committed”

- Ayn Rand

4.1 What is suspension?

Suspension is the Temporary deprivation of a person’s power or privileges, especially of office or profession.²⁷

“Suspension is defined as a state of being debarred. An employee when he is suspended is thus debarred from any privilege, from the execution of an office or from the enjoyment of an income. It is a temporary deprivation of office but by reasons of suspension the person suspended does not lose his office nor does he suffers any degradation. He only ceases to exercise the power and to discharge the duties for the time being. He cannot draw his salary but he gets his suspension allowance and he is also subjected to the same disciplinary action and penalties as other employee. It only means a temporary deprivation of office. Suspension is something less than termination and therefore a connection continues between the master and the servant. The servant cannot seek employment elsewhere though he does not perform his normal duties for the allowance paid to him and although the master may not be obliged to pay him full wages. The suspended employee cannot be asked to render any service or perform any duty”.²⁸

4.2 Rule 8 of the HAL CDA Rule 1984 provide as under:

- i) The authority competent to take disciplinary action against an officer or the next higher authority or to concerned appointing authority as the case may be may, by an order in writing, place an officer charged with misconduct under suspension pending enquiry in the following circumstances.
 - (a) Where a disciplinary proceeding against him is contemplated or is pending; or
 - (b) Where a case against him in respect of a criminal offence is under investigation or trial.
- ii) An officer, who is detained in custody on a criminal charge for a period exceeding 48 hours can be suspended with effect from the date of detention by an order of the competent authority or next higher authority or appointing authority and shall remain under suspension until further orders;
- iii) Where an order of compulsory retirement or dismissal set aside and/ or the case is remitted for further proceedings on the basis of appeals preferred by an officer, the

²⁷ Black’s law Dictionary

²⁸ Nazmul Hasan vs Sr. Supdt., R.M.S 1986 2 ATR 554, para 4

officer shall be deemed to have been under suspension from the date of the order revoking compulsory retirement or dismissal until orders;

4.3 Implication of suspension

Following implications flow from an order of suspension:

- a. Suspension is not a penalty. It is an interim order to keep powers, functions and privileges of the employee in abeyance.
- b. Suspension does not put an end to the relationship of master and servant between the State and employee. The reason is that the contract of service is not terminated. It remains in a state of suspended animation.
- c. There is no reduction in his rank, status or pay. But, since he does not discharge his duties, he cannot enjoy the privileges connected with his functioning in office.
- d. Since no functions are discharged, the principle- 'no work, no pay' applies. But since relationship of master and servant continues and the public servant is subjected to Conduct Rules including the one that during the subsistence of employment he cannot work elsewhere, he is paid 'subsistence allowance' for livelihood of self and members of family. This amount is regulated by the rules applicable to him. But, the Supreme Court has held, the amount must not be illusory²⁹.
- d. The suspended employee continues to be governed by various Service Rules as before, including the Discipline and Conduct Rules. Thus, he remains subject to the same discipline penalties, and to the same authorities.
- e. Suspension does not affect his status as a permanent or a quasi-permanent employee. Accordingly, if he is permanent he retains his lien on the post³⁰.
- f. Since he remains subject to the Conduct Rules, which prohibit private trade or employment, an employee under suspension cannot supplement his subsistence allowance, which is only a fraction of his emoluments, by engaging himself in any other employment, business, profession or vocation.
- g. Suspension is not a penalty though, no doubt, it has injurious effect on the suspended employee.
- h. He cannot be asked to render any service or perform any duty. It is not even necessary for him to mark his attendance regularly at the place of work.

4.4 Purpose of Suspension

The object of placing a public servant under suspension is to keep him away from the work situation so that he cannot interfere with the conduct of inquiry or tamper with the documentary or oral evidence against him in any manner, or where, having regard to the nature of charges against him, it is felt that it would be unsafe to continue to vest in him the power of the post.

Resort to suspension may become necessary in a case where a public servant is charged of a grave offence or a serious misconduct. The reason is that a criminal proceeding or a department inquiry is generally a time-consuming process and it may take quite some time before he either clears himself of the charge or is lawfully dismissed or removed from service. In

²⁹ State of Maharashtra vs Chanderbhan, AIR 1983 SC 803

³⁰ Vide FR 13(e)

the meantime, it may not be in the public interest to allow the officer under cloud to continue in a public office.

Then, in cases involving allegations of moral turpitude, it may not be expedient to keep the employee in the work situation until he absolves himself of those charges.

Yet, there may be cases where suspension is the right step since continuance of the employee in his place of duty is likely to create problems of discipline.

4.5 Kinds of Suspension

In V.P. Gindroniya case³¹, Supreme Court observed that three kinds of suspension were known to law. These are--

- i. Suspension as a mode of punishment;
- ii. Suspension During the pendency of any inquiry, if the terms of employment provide for it; and
- iii. The act of merely forbidding him from discharging his duties.

4.5.1. Suspension as Penalty

Suspension can be imposed as a penalty only if it is so specified in the disciplinary rules. In other words, unless it is a recognised penalty in terms of the departmental rules, suspension cannot be treated as a substantive penalty.

Suspension is not a punishment under HAL CDA Rules 1984.

In the case of workmen governed by the Standing Orders, 'Suspension' is still a substantive penalty which can be imposed after holding a due inquiry, where ever it is notified specific punishment under the relevant certified standing orders.

4.5.2 Suspension as an interim measure during the pendency of departmental or criminal proceedings

This kind of suspension can be ordered only if there is an express provision in the contract or conditions of service, and that too within the four walls of those terms.

In this kind of suspension the contract of employment continues to subsist but comes under suspended animation. The result is that during such suspension the employee is not bound to render work and the employer is not bound to pay salary.

There is always a liability for payment of subsistence allowance during the period of such suspension. The quantum of payment is governed by the relevant statutory rules. The reason **is** that the employee cannot engage himself in any other employment, business, trade or profession during the period. He has to certify this before he gets the amount of subsistence allowance.

4.5.3 Suspension as an implied condition of service.

Such an order is perfectly valid in law in the relationship of master and servant. Hence, the employee must obey it. The reason is that in every contract of service, it is an implied condition

³¹ V.P. Gindroniya vs State of M.P. AIR 1970 SC 1494

that the employee must obey every lawful order made by the master. Suspension, in this sense, is an implied condition in every contract of service³².

4.6 Suspension and show cause notice

Suspension pending a departmental or criminal proceeding against a government servant is not a punishment and does not amount to 'reduction in rank' in the sense the term is used in Article 311(2) of the Constitution³³.

Therefore, it is not necessary to afford reasonable opportunity to show cause before an order of suspension is made against an employee. It is also not necessary when a public servant is placed under suspension pending criminal proceedings against him³⁴ or when his suspension is automatic on his arrest³⁵.

4.7 Suspension is an administrative action

An order of suspension is not a quasi-judicial order. It is an administrative order. It is immaterial what effects flow from such an order **M. Nagalakshmi vs State**³⁶; **Jammu University vs D.K Rampal**³⁷. A mere contemplation of an inquiry or pendency of criminal trial will be sufficient to exercise the power without actually recording judicial or quasi-judicial satisfaction for making the order.³⁸

4.8 Need to make a speaking order

Normally, the requirement of making a speaking order exists in judicial or quasi-judicial matters only. The order of suspension is neither judicial nor quasi-judicial: it is purely an administrative order. Thus there is no requirement of making a reasoned order while dealing with administrative matter unless such a requirement flows from the rules itself³⁹.

However an order of suspension must be based on an objective assessment of the situation by the competent authority himself and not as a result of dictation or direction by an extraneous authority⁴⁰. Furthermore an order of suspension cannot be issued blindly without application of mind. or mechanically simply because the prosecuting agency had advised in its favour.

4.9 Extent of power available to suspend

All the disciplinary rules authorize an order of suspension in the following three situations:

- a. Where a disciplinary proceeding against him is contemplated or is pending; or
- b. Where a case against him in respect of any criminal offence is under investigation, inquiry or trial;

³² *Balwantry Patel vs State of M.P* AIR 1968 SC 800

³³ *Mohd. Ghouse vs State of Andhra*, AIR 1957 SC 246; *Union of India vs P.K More*, AIR 1962 SC 630

³⁴ *R.P Kapur vs Union of India* AIR 1964 SC 787

³⁵ *S.K Chatterjee vs S.N Bannerjee* AIR 1955 Cal. 365

³⁶ 1973 2 SLR 105

³⁷ AIR 1077 SC 1148

³⁸ *T. Shivashankar vs State of Karnataka*, 1985 Lab. IC (Kar) 630

³⁹ *Union of India vs E.G Nasmbudiri*, 1991 AIR SCW 1190

⁴⁰ *C.E Eranimose vs State*, 1970 SLR 520

c. For reasons of security of state.

4.10 When the Proceedings is 'Contemplated'

The Court has held⁴¹ "A departmental inquiry is contemplated when on an objective consideration of the material the appointing authority considers the case as one which would lead to a departmental inquiry, irrespective of whether any preliminary inquiry, summary or detail, has or has not been made, or if made, is not complete"⁴¹.

4.11 Holding of Preliminary Enquiry

The holding of a preliminary enquiry is not an essential requirement before an order of suspension is made⁴².

4.12 Pendency of Proceedings

A disciplinary proceeding gets pending with the issue of charge sheet. An order of suspension may be made at any time during the pendency of the proceedings and kept in force even if the departmental proceedings are suspended or postponed to a future date⁴³. Equally, the order of suspension can be revoked at any time during the pendency of the proceedings.

4.13 Suspension pending Criminal Charge

Suspension is ordered only in case of an offence of serious nature involving moral turpitude and not for petty offences unrelated to morality or official duties of the public servant.

4.14 'Investigation', 'Trial'

Investigation under the Criminal Procedure Code includes all proceedings under the Code for collection of evidence. The investigation in a criminal cases starts with the registration of an F.I.R by the local police, or an P.E./R.C by the C.B.I. The 'trial' begins when a challan is presented to a court of law and ends with acquittal or conviction by the court.

4.15 When suspension may be justified

Though suspension from service pending a departmental proceeding is not a penalty, it has far reaching adverse effects on the employee concerned. It leaves a deep stigma on the public servant's entire service career, even though he may be exonerated at a later stage, after conclusion of the Formal Inquiry. "There is no doubt that order of suspension affects a Public servant injuriously" - observed Supreme Court in *Khem Chand*⁴⁴.

The reason is that by an order of suspension his emoluments get restricted and his anxieties increase as his fate hangs in balance. Since the Conduct Rules continue to apply to him, he cannot supplement his subsistence allowance, which is only a fraction of his emoluments, by engaging himself in any other employment, business, profession or vocation. Where suspension has been ordered during the criminal proceedings, it might have an adverse effect on his defence. Suspension also undermines the prestige of the employee and brings him down in

⁴¹ State of U.P vs Rajendra Shankar, 1974 1 SLR All 333

⁴² Har Dev pillai vs Union of India, GB CB 1987 p. 441: 1988 7 ATC 914

⁴³ Binod Chandra vs Union of India, AIR 1960 Punjab 147

⁴⁴ Khem Chand vs Union of India , AIR 1963 SC 687

public eyes. In fact, the effect of suspension on the morale of the Services is rather catastrophic. In the case of officers holding prestigious appointments, the suspension may give rise to a scandalous and sensational publicity which could affect adversely the morale of the services as a whole. The Kerala High Court rightly observed in the case of N Subramanian⁴⁵ that an order of suspension, though not a penalty, brings to bear on the employee consequences far more serious in nature than several of the penalties.

The employer is also a loser as it has to pay subsistence allowance, many a time, at an enhanced rate which may be equal to 75 percent of his emoluments, without utilizing his services. The long spell of suspension also results in discontinuity of acquaintance with work and is thus detrimental to the efficiency of the employee concerned⁴⁶.

On the other hand, however officers charged of corruption, if not suspended, manage to get their inquiries delayed because delay in criminal /disciplinary /departmental proceedings enables them to continue in service even though the charges against them were grave enough to deserve the punishment of dismissal from service. Such officials also use the continuance in office for earning money through illegal/corrupt means.

4.16 Guidelines issued by the Government on justified suspension:

The relevant extract of the **MHA O.M. No 43/56/64-AVD, dated 22.10.1964** on the above subject is reproduced below.

“It has been decided that public interest should be the guiding factor in deciding to place a Government servant under suspension, and the disciplinary authority should have the discretion to decide this taking all factors into account. However, the following circumstances are indicated in which a disciplinary authority may consider it appropriate to place a Government servant under suspension. These are only intended for guidance should not be taken as mandatory:

- i. Cases where continuance in office of the Government servant will prejudice the investigation, trial or any inquiry, (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 the public servant is working:
- iii. Where the continuance in office of the Government servant will be against the wider public interest other than those covered by (i) and (ii), above, such as there is a public scandal and it is 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 allegations have been made against the Government servant and the preliminary inquiry revealed that a prima facie case is made out which would justify his prosecution or his being proceeded against in departmental –proceedings, and where the proceedings are likely to end in his conviction and/are dismissal, removal or compulsory retirement from service.

⁴⁵ N. Subramanian vs State 1973 1 SLR 521

⁴⁶ M. Chengaiah vs State of Tamil Nadu, 1983 2 SLR 436

v. Where the employee is suspected to have engaged himself in activities prejudicial to the interest of the security of the Company/ State.

Note-

- (a) In the first three circumstances, the disciplinary authority may exercise his discretion to place a public servant under suspension even when the case is under investigation and before a prima facie case is made out.
- (b) Certain types of misdemeanors where suspension may be desirable in the four circumstances mentioned, are indicated below:-
 - (i) Any offence or conduct involving moral turpitude;
 - (ii) Corruption, embezzlement or misappropriation of Government money, possession of disproportionate assets, misuse of official power for personal gain;
 - (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 types of misdemeanor specified in sub-clauses (iii), (iv) and (v) discretion has to be exercised with care⁴⁷.

4.17 Suspension of suspect officials in corruption cases: CVC directive⁴⁸

The Ministry of Home Affairs OM No 43/56/64-AVD dated the 22 Oct 1964 indicates the circumstances in which a disciplinary authority may consider it appropriate to place a Govt. servant under suspension. The OM provides inter-alia that suspension may be desirable in cases of offences/conduct involving moral turpitude, corruption, misuse of official powers for personal gain etc. It is reiterated that suspension may be resorted to in very serious cases of corruption/moral turpitude or in cases where direct and specific evidence to implicate Govt. servants in corruption cases is already available. Suspension in such cases will tone up the integrity in the Administration by acting as a deterrent to corrupt employees indulging in such practices.

2. One such instance where there is direct evidence of corruption is where a Govt servant is caught red-handed while accepting bribe in a trap arranged by a Police Organisation. After a trap is successfully laid, a criminal case is filed against the Govt servant which generally ends in his conviction. Subsequently, on the ground of conduct which had led to his conviction on a criminal charge, the Govt servant is generally dismissed or removed from service. Thus there is a strong justification for placing under suspension a Govt servant who has been caught accepting illegal gratification in a trap case. Invariably, in such cases, the Govt servant should, therefore, be placed under suspension with a view to making anti-corruption measures more effective. Such an action would also create the desired impact in the mind of the Public that the Govt is serious in dealing with cases of corruption.

⁴⁷ Para 2.5 Chapter V of the Vigilance Manual, Volume I

⁴⁸ DP & AR OM No 142/5/84-AVD(I) dated 16 Feb 1985

Further, an official may also be placed under suspension, if,

1. In a case where a trap has been laid to apprehend a Public servant while committing an act of corruption (usually receiving illegal gratification) and the Public servant has been so apprehended; immediately after the Public servant has been apprehended.
2. In a case where on conducting a search it is found that a Public servant is in possession of assets disproportionate to his known source of income and it appears prima facie that a charge under Section 13(1)(e) of the Prevention of Corruption Act could be laid against him; immediately after the prima facie conclusion has been reached.
3. In a case where a Charge Sheet accusing a Public servant of specific acts of corruption or any other offence involving moral turpitude has been filed in a criminal court immediately after the filing of the Charge Sheet.
4. In a case where after investigation by the CBI a prima facie case is made out and pursuant thereto regular departmental action for imposition of a major penalty has been instituted against a Public servant and a Charge Sheet has been served upon him alleging specific acts of corruption or gross misconduct involving moral turpitude immediately after the Charge Sheet has been served upon the Public servant⁴⁹.

4.18 What is meant by the term “Moral Turpitude?”

The term ‘Moral Turpitude’ has been defined as quality of crime involving grave infringement of the moral sentiments of the community (Webster’s dictionary). It is an act which could shake the moral conscious of society in general and the perpetrator could be considered to be a person of a depraved character or; looked down upon by the Society⁵⁰. An act will be considered as involving moral turpitude if it involves baseness, vileness or depravity, when judged in the context of private and social duties which a man owes to his fellowmen or to the society in general.

In **Mangali vs Chhaki Lal**⁵¹, the tests to find out ‘Moral Turpitude’ were given as

- (a) Whether act is such as would shock the moral conscience of society,
- (b) Whether the motive which led to the act was a base one, and
- (c) Whether on account of the act having been committed the perpetrator could be considered to be of depraved character or a person who was to be looked down by the society.

CVC letter⁵² on Suspension of public servants involved in criminal/ departmental proceedings runs as under.

“Since the suspension of a public servant on serious charges, like corruption, is directly related to the vigilance administration, the Commission hereby desires that all disciplinary authorities should follow the instructions strictly. It also desires that if the CBI recommends suspension of a public servant and the competent authority does not propose to accept the CBI’s recommendation in that regard, it may be treated as a case of difference of opinion between the

⁴⁹ DOPT O.M. No 142/5/84-AVD(I) dated 20 Jun 86

⁵⁰ Baleshwar Singh vs District Magistrate AIR 1959 All. 71

⁵¹ AIR 1963 All. 527

⁵² CVC letter No.000/VGL/70 Dated 25th September 2000

CBI and the administrative authority and the matter may be referred to the Commission for its advice. It also directs that if a person had been suspended on the recommendations of the CBI, the CBI may be consulted if the administrative authority proposes to revoke the suspension order.”

4.19 Caution by Supreme Court against suspension on trivial lapses

In **M. Paul Anthony vs Bharat Gold Mines Ltd**⁵³ Honorable Supreme Court observed- “Exercise of right to suspend an employee may be justified on the facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by “suspension syndrome” and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee’s trivial lapses which has often resulted in suspension”.

4.20 Authorities competent to suspend

In Service Jurisprudence, the authority who appoints an employee is also competent to dismiss or remove him from service. It goes without saying that he can also impose the lesser penalties. This power of the appointing authority includes the power to place under suspension also.

An order to suspension made with the approval of the authority competent to suspend but signed by another officer for him is valid in law **B Chakravarty vs Kaula**⁵⁴. In such a case, the presumption would be that the order has been passed by the authority specified in the order.

4.21 Suspension cannot take retrospective effect

In **Hemanta Kumar vs Mukherjee**⁵⁵ the Calcutta High Court observed: “There can be no meaning in suspending a man from working during a period when the period is passed and he has already worked or suspending a man from occupying a position or holding a privilege in the past when he has already occupied or held it”.

4.22 Date of effect of order of suspension

The normal principle is that an order of suspension takes effect from the date of its communication **Amarsingh Harla vs State of Rajasthan**⁵⁶

4.23 When the employee is on leave

The order of suspension may take effect from any date falling within his leave or unauthorized absence.

4.24 Defiance of an Order Suspension

If an employee with the knowledge that an order of suspension exists against him, attempts to defy it on any ground, he can be proceeded against departmentally, as his act would constitute a serious misconduct, **Rameshwar vs Bharat Khand Textile Mfg. Co Ltd**⁵⁷.

⁵³ AIR 1999 SC 1416 in para 29

⁵⁴ AIR 1957 All. 671

⁵⁵ AIR 1954 Cal.340

⁵⁶ 1952 SCR 110

4.25 Deemed suspension:

'Deemed Suspension' is a situation where an employee is deemed to have been placed under suspension by an order of the appointing authority, on the happening of some contingency specified in the rules.

4.26 Continuous detention for a period exceeding 48 hours

If a Public servant is detained in custody for a period exceeding 48 hours, he will be deemed to have been placed under suspension by an order of the appointing authority. Though the suspension shall become effective only after the prescribed period of 48 hours is exceeded, it will take retrospective effect from the date of detention.

When a Public servant is detained in custody, he is expected to disclose his identity to the detaining authority who shall forthwith inform the employer of the fact of detention and the circumstances connected therewith. The employee is also required to make a report about his detention and circumstances leading there to his controlling authority in all case, even where the detention is far less than 48 hours or where he is released on bail.

Any failure in this regard may render him liable for disciplinary action for suppression of material information apart from the action that may be called for on the outcome of the police action against him.

4.27 Period of detention must be continuous

The period of detention of 48 hours, referred to therein, must be continuous; broken period of detention, if any not counting.

4.28 Imprisonment exceeding 48 hours following a conviction

Essential Requirements

The deemed suspension in the above situation can take effect only if the conditions mentioned below are satisfied-

- i. The Public servant is convicted by a court of law;
- ii. He is sentenced to imprisonment for a period exceeding forty-eight hours;
- iii. He actually serves the term of imprisonment for a period exceeding forty-eight hours, intermittent periods of imprisonment by the same conviction, counting; and
- iv. He is not forthwith dismissed, removed or compulsorily retired from service consequent upon such conviction.

4.29 When the penalty of dismissal etc. is set aside by a departmental authority

Essential Requirements

For the deemed suspension to be operative under this sub-rule, it is essential to comply with the following conditions-

⁵⁷ 1957 ICR 109

- i. The original order of dismissal, removal or compulsory retirement is set aside by a departmental authority, in appeal, revision or review;
- ii. In case is remitted for further inquiry or action or with any other directions; and
- iii. The Public servant was originally under suspension on the date of his dismissal, removal or compulsory retirement.

4.30 When the penalty of dismissal etc. is set aside by a court of law

Essential Requirements

The deemed suspension in such a case can take place on the fulfillment of the following conditions:

- i. The order of dismissal, removal or compulsory retirement is set aside by a court of law, purely on technical grounds without going into merits of the case;
- ii. The disciplinary authority decides to hold further action in the matter; and
- iii. Further action is taken on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed.

4.31 Administrative aspects of suspension:

4.31.1 Change of Headquarters during suspension

Normally, the headquarters of the employee under suspension should be his last place of duty. He cannot leave that station without permission. A request for change of headquarters is usually granted where it is not likely to put the Government to any extra expenditure like travelling allowance, or raise other complications⁵⁸

4.31.2 Leave during suspension

Ordinarily, leave is not granted to a Public servant under suspension. The rule is justified in the interest of speedy finalization of disciplinary proceedings [**Bank of India officer's Association vs Bank of India**]⁵⁹

4.31.3 Lien

A Public servant having a lien on a permanent post retains it while under suspension⁶⁰.

4.31.4 Resignation during suspension

'Resignation' has been defined as "an intimation in writing sent to the competent authority by the incumbent of a post, of his intention or proposal to resign the office/ post either immediately or from a future specified date.

"Where a Public servant, who is under suspension submits a resignation the competent authority should examine, with reference to the merit of the disciplinary case pending against

⁵⁸ MHA O.M No 39/5/56- Ests. (A), Dt. 8.9.1956

⁵⁹ (1979)2 SLR 326

⁶⁰ [F.R.14(2)]

the Public servant, whether it would be in the public interest to accept the resignation. Normally an officer is placed under suspension only in cases of grave delinquency and it would not be correct to accept resignation of an officer under suspension.

Concurrence of the Government / Central Vigilance Commission should be obtained before submission of the case to the Minister in charge/Comptroller and Auditor General, if the Central Vigilance Commission had advised initiation of departmental action against the Public servant concerned or such action has been initiated on the advice of the Central Vigilance Commission".

4.31.5 Voluntary Retirement

In the case of notice of voluntary retirement by a public servant under suspension, it is open to the competent authority to withhold permission to retire.

4.31.6 Grant of Advance

An advance for the purchase of a conveyance shall not be granted to a Public servant under suspension and, if an advance has already been sanctioned to him before he was placed under suspension, he shall not be permitted to draw such advance during the period of his suspension⁶¹.

4.31.7 Death during suspension

Where a Public servant under suspension dies before the disciplinary or court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been placed under suspension, subject to the adjustment in respect of subsistence allowance already paid⁶²

4.31.8 Admissibility to Leave travel Concession

Leave travel concession is not admissible to an employee under suspension for the simple reason that no leave can be granted to him while under suspension. The members of his family, however, remain entitled to the concession since in their case the grant of leave is not a pre-condition for grant of the concession.

4.32 Payment during suspension – Subsistence Allowance:

Rule 9 of the CDA Rule 1984 provides as under:

- i) An Officer under suspension shall be entitled to draw subsistence allowance equal to half of the total emoluments last drawn by him provided the officer has not engaged in any other employment business, profession or vocation. Subsistence allowance at this rate will be paid for the first six months of suspension. Thereafter if the enquiry gets prolonged and the officer continues to be under suspension for reason attributable to the officer, the subsistence allowance will be reduced to $\frac{1}{4}$ of the emoluments (Basic Pay + Dearness Allowance + House Rent Allowance+ City Compensatory Allowance) and, on the other hand the delay is

⁶¹ Rule 200, General Financial Rules

⁶² F.R. 34-B(2)

for reasons beyond the control of the officer, subsistence allowance will be increased to $\frac{3}{4}$ of the emoluments.

ii) When an Officer who has been placed under suspension under Rule 8 is reinstated, the period of suspension will be treated in the following manner:

(a) If he is fully exonerated, the period of suspension will be treated as duty and he will be paid the full pay and allowance to which he was entitled as if he was on duty less the subsistence allowance already paid;

(b) In other cases, he will receive such portion of the pay and allowance as the competent authority decides and the period spent on suspension treated as on duty only to such an extent and for such purposes as the competent authority decides provided that if the officer so desires the competent authority may permit of absence from duty being converted into leave due and admissible to the officer;

iii) subsistence Allowance will be admissible to an officer who has been taken into custody also with effect from the date of suspension, irrespective of the fact whether bail has been granted to him or not.

4.32.1 Subsistence allowance must be sufficient to maintain the employee and his family-frequent reviews should be undertaken to ensure it

“The Subsistence allowance is paid by the Government so that the Public servant against whom an order of suspension is passed on account of the pendency of any disciplinary proceeding or a criminal case instituted against him could maintain himself and his dependents until the departmental proceedings or the criminal case as the case may be comes to an end and appropriate orders are passed against the Public servant by the Government regarding his right to continue in service etc. depending upon the final outcome of the proceedings instituted against him. **P.L Shah vs Union of India**⁶³.”

To get subsistence allowance, the suspended employee is required to produce a certificate to the effect that, he is not engaged in any other trade/business/employment in prescribed format. Subsistence allowance is a delicate issue and the Disciplinary Authority/Inquiry Officers should ensure this especially during inquiry, failing which the courts are likely to render the proceedings null and void.

4.32.2 Review

The Suspension is liable to be reviewed after a period of six months. As a result of this review, the subsistence allowance may be hiked to 75 % or reduced to 25 % depending upon who can be attributed the responsibility for prolongation of the suspension. The Disciplinary Authority is required to record the reason in writing.

4.32.3 Non- payment of Subsistence allowance violates Article 21

In **M. Paul Anthony vs Bharat Gold Mines Ltd**⁶⁴ the Supreme Court observed that Article 21 of the Constitution guarantees basic human right of life and livelihood therefor. The provisions

⁶³ AIR 1989 SC 985: (1989) 1 SCC 546

⁶⁴ AIR 1999 SC 1416 *in para 31*

for payment of subsistence allowance have been made in service rules to ensure non-violation of this very important right of the employee. This obligation can be fulfilled only by regular payment of subsistence allowance.

4.33 End of suspension: Revocation of Suspension

4.33.1 Suspension ends on Revocation:

The order of suspension may be revoked by the authority which passed that order; or its next higher authority or the concerned appointing authority as the case may be⁶⁵.

4.33.2 Suspension ends with order of penalty

Where the Charged Employee under suspension is finally dismissed, removed or compulsory retired from service, the order of suspension lapses with the order of penalty.

4.33.4 Suspension ends when criminal case is finally disposed of

In the case of a Charged Employee who is under suspension pending some criminal proceedings against him, if he is not being proceeded departmentally also, suspension order comes to an end when the criminal proceedings are finally disposed of.⁶⁶

4.34 Scope of judicial interference

1. Where suspension is ordered by an authority not competent to suspend
2. Where suspension is in contravention of statutory rules
3. Where the order of suspension is mala fide
4. When the order of suspension is not justified
5. Where order of suspension gives unauthorized retrospective effect
6. Where suspension is ordered without proper application of mind
7. Where suspension is unduly prolonged or becomes oppressive

⁶⁵ Rule 8(iv) of HAL CDA Rules 1984

⁶⁶ O P Gupta vs State of U.P. AIR 1955 SC 600

CHAPTER V

CHARGESHEET

“Crime is terribly revealing. Try and vary your methods as you will, your tastes, your habits, your attitude of mind, and your soul is revealed by your actions.”

- Agatha Christie

5.1 Object of Charge-sheet:

If (during the preliminary enquiry or otherwise) a prima facie case is made out and the competent authority or disciplinary authority, as the case may be, satisfies himself and decides to take further proceedings, then, a regular enquiry is started as per the rules and procedure. The first step in this direction is the framing and issuance of a Charge-sheet. Charge-sheet in departmental enquiries is a written and formal intimation containing the alleged acts of misconducts which the delinquent has committed in the employment.

Absence of charge-sheet violates natural justice. The Principles of Natural Justice requires that the employee affected should have full and true disclosure of the facts sought to be used against him. He must also be given opportunity to defend himself and to give a proper explanation. The right of hearing is a right, no more and no less, to a hearing which is adequate to safeguard the right for which such protection is afforded. It must be hearing in substance and not form. If such hearing is denied the administrative action is void⁶⁷. It is therefore essential that the employee charged with misconduct must be told in the clearest terms and with full particulars what his alleged misconduct is. It should not be left to him to find out what are the specific allegations against him.

The object of issuing a Charge-sheet is to give opportunity to the employee who is charged with misconduct to offer his explanation to defend himself. The rules of natural justice require that person charged should know the nature of the misconduct with which he is charged and should be given an opportunity to defend himself and to give a proper explanation⁶⁸

5.2 Drafting of Charge-sheet:

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

Inadequate skill in drafting the charge-sheet is one of the reasons which help the charged officials to get away with lapses/misconduct committed by them. Many cases fail before the Courts of Law just because of the defective framing of charge-sheets. It has been observed by the Commission that the charge-sheets are sometimes framed in a very general way and the existing practice with regard to framing of charges only pointing out that the official concerned has acted in an unbecoming manner or has shown lack of devotion to duty or has acted without integrity.

⁶⁷ Gupta Tobacco Co. vs Union of India AIR 1968 Del 64

⁶⁸ Bhupindar Pal Singh v. D.G. Civil Aviation; 2003 (98) FLR 1192.

The competent authority or disciplinary authority shall draw up or cause to be drawn up the substance of the imputation of misconduct or misbehavior into definite and distinct articles of charge⁶⁹.

A Charge-sheet should be specific and must set out all the necessary particulars. A Charge-sheet contains :

- i. the substance of the imputations of misconduct or misbehaviour into definite and distinct articles or charge;
- ii. a statement of the imputations of misconduct or misbehaviour in support of each article of charge which shall contain:
 - a) a statement of all relevant facts including any admission or confession made by the Government servant; and
 - b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

The allegations which contain the details of misconduct are called Imputations whereas specific misconduct is a charge.

5.3 Statement of Imputations:

The statement of imputation should give a full and precise recitation of the specific and relevant acts of commission or omission on the part of the Employee in support of each charge including any admission or confession made by the Government servant and any other circumstances which it is proposed to take into consideration. A statement that a Government servant allowed certain entries to be made with ulterior motive was held to be much too vague.

Rule 14(3) (i) of the CCS (CCA) Rules stipulates that "the substance of the imputations of misconduct or misbehaviour into distinct articles of charge" should be drawn up by the Disciplinary Authority whenever it is proposed to hold an enquiry against a Government servant. This would mean that no charge can be proper or complete without including therein elements of the main content of the allegations/imputations. Therefore, the spirit of all Conduct, Discipline & Appeal Rules imply that there should be a specific finding on each allegation made against the officer. At the end, the IO must then apply his mind to come to a conclusion as to whether the charge as a whole has been proved wholly, partially or not at all.

A vague accusation that the Government servant was in the habit of doing certain acts in the past is not sufficient. It should be precise and factual. In particular, in cases of any misconduct/misbehaviour, it should mention the conduct/behaviour expected or the rule violated. It would be improper to call an Investigating Officer's Report a statement of imputations. While drafting the statement of imputations, it would not be proper to mention the defence and enter into a discussion of the merits of the case. Wording of the imputations should be clear enough to justify the imputations in spite of the likely version of the Government servant concerned.

⁶⁹ State of U.P. v. Chandra Pal 2003 (97) FLR 602

5.4 Articles of Charges:

The framings of charges, the holding of an enquiry into them, the suspension of the employee during the enquiry, are all steps in the exercise of the disciplinary power. All these steps are required to be taken by the disciplinary authority and not by a delegatee of that authority. In the absence of a statutory provision permitting expressly or impliedly delegation of disciplinary power, an authority other than the disciplinary authority has clearly no power to frame on its own initiate charges against a civil servant and hold an enquiry into them.

i. it should be so drafted that it is well understood by the employee. Hence, it should be written in simple, unambiguous and unequivocal terms. The Charge-sheet should be in a language which is understood by the employee concerned. If the accused is given Charge-sheet of allegation in a language which he cannot understand and he asks for it in a language which he can understand his request should be complied with.

ii. It should not be vague⁷⁰ and suggestive. Here standard of vagueness in departmental enquiries is not the same as in criminal proceedings. It means facts narrated should be such that it discloses offence/acts of omissions or commissions. Vague can be considered to be the antonym of 'definite'. If the ground is incapable of being understood or defined with sufficient certainty it can be called vague. When the Charge-sheet gives the necessary particulars of the misconduct alleged, it cannot be characterized as vague. When the accused employee's explanation in reply to the Charge-sheet shows that he understood the charge, he cannot challenge the Charge-sheet as Vague. If at all the charge is vague, such vagueness should be complained of at the earliest.

iii. Alleged offence/ acts of omissions or commissions should be such that are fitted in the enumerated list of misconduct in CDA Rules/standing order⁷¹. Misconduct or misconducts to be specified in clear and unambiguous terms. There should be reference to Para or Sub-para of service rules with in which the particulars of misconduct falls. There are certain offences or misconducts which have got specific name such as theft, misappropriation, forgery, disobedience, strike, go-slow, negligence etc. It is desirable that in drafting a Charge-sheet, misconduct is called by the specific name which is given to it under the Service Rules though it is not necessary to mention section or rule constituting the misconduct⁷². There are certain misconducts such as defamation, threat, abuse, insult, giving false evidence or making false entries which have to be inferred from the words spoken or written, then actual words must be re-produced as they were rest.

iv. It should not be direct. It should not be such to indicate a conclusion. The charge or charges must not assume the guilt of the person concerned and no hint of punishment is to be given. Care should be taken to avoid repetition.

v. it should not be based on surmise⁷³ or conjecture.

⁷⁰ Vague means "incapable of being understood"

⁷¹ **N.S Makwana vs Union Bank of India and other** 1985 LJ Vol.II p.296

⁷² At the same time mentioning wrong Para of the service rules constituting misconduct is not a material defect and it does not vitiate the enquiry proceeding. **Goweri Thimma Reddy vs State of P.P.** AIR 1958 AP 318

⁷³ Surmises means that although there is no evidence at certain points, but the point is deemed to exist on account of certain assumptions and thereby the mind is prone to fill a gap in the evidence for which there is no justification.

vi. It should be specific. It means the date, time and place of occurrence to be invariably mentioned and the names of the person if any, in whose presence the incident has occurred. Each incident should be treated as a separate charge. Sometimes an employee is found to have committed a series of incidents. Each such act of defalcation is a separate charge.

vii. It should also mention the name of all those who are involved. Say for example, if Mr X is involved along with Mr. Y, so it should tell that you along with Mr. Y and so on.

viii. It should not be framed in closed mind⁷⁴.

ix. It should not leave any scope to consider it as step for victimization or an act of discrimination or unfair labour practice on the part of the employer.

x. Language should be carefully chosen and it should be very simple. Compound sentence should be avoided. If the charge sheet is framed on either/or basis, the employee may not be able to comprehend the exact nature of the alleged lapses and may claim that it is vague and thus giving rise to future complication.⁷⁵

xi. Charge-sheet should mention the facts instead of mere inference of judgment from the facts.

xii. Time within which the delinquent is required to reply to the Charge-sheet should be mentioned including the consequences if no reply is received within stipulated time.

xiii. If previous record of the employee is relied upon to show his habit or is an aggravation factor, then sufficient particulars of the previous record and the word "habitual" must be mentioned in the charge-sheet.

xiv. The charge-sheet should not mention penalty.

General considerations regarding drafting of charge sheet is placed at **Appendix 'C'**

5.5 List of Witnesses

A number of witnesses are usually examined during the course of the preliminary inquiry and their statements are recorded. The list of such witnesses should be carefully checked and only those witnesses who will be able to give positive evidence to substantiate the allegations should be included in the statement for production during the oral inquiry. Formal witnesses to produce documents only need not be mentioned in the list of witnesses.

5.6 List of documents

The documents containing evidence in support of the allegations which are proposed to be listed for production during the inquiry should be carefully scrutinized. All material particulars

⁷⁴ A case in point for issuing charge sheet in closed mind is where it tends to show the conclusion already drawn by the Disciplinary Authority.

⁷⁵ Fire Stone Tyre & Rubber co Ltd and their Workmen 1981 LJJ Vol-II p. 218

given in the allegations, such as dates, names, makes, figures, totals of amount, etc., should be carefully checked with reference to the original documents and records.

Drafting a charge is an art. It is an art of framing traps and slots and to fit the delinquent into such traps, slots and categories. In other words, to avoid flexibility and to fix rigidly on slots so that no amount of lubricant make it flexible.

The Charge sheet should be issued on bonafide ground and in good faith and it should not be issued out of victimization or unfair labour practice. What is unfair labour practice may also be victimization and vice versa.

A Guideline on preparation of Charge-sheet is placed on **Appendix 'D'**

5.7 CVC directive on Charge Sheet⁷⁶

"Special care has to be taken while drafting a charge-sheet. A charge of lack of devotion to duty or integrity or unbecoming conduct should be clearly spelt out and summarized in the Articles of charge. It should be remembered that ultimately the IO would be required to give his specific findings only on the Articles as they appear in the charge-sheet. The Courts have struck down charge-sheets on account of the charges framed being general or vague⁷⁷. If the charge is that the employee acted out of an ulterior motive, that motive must be specified⁷⁸. Equally importantly, while drawing a charge sheet, special care should be taken in the use of language to ensure that the guilt of the charged official is not pre-judged or pronounced upon in categorical terms in advance⁷⁹. However, the statement merely of a hypothetical or tentative conclusion of guilt in the charge will not vitiate the charge sheet⁸⁰

5.8 Preparation of charge-sheets for RDA in CBI cases:

It is for the organisations/disciplinary authorities concerned to prepare the charge-sheets/imputations (as also the lists of exhibits and prosecution witnesses) in those cases where the CBI recommended departmental proceedings and where CBI's recommendation is accepted by the disciplinary authority. Since the SP's reports are, generally speaking, exhaustive and self contained, preparation of the charge-sheets/imputations should not ordinarily be a problem, per se, for the internal Vigilance Departments/functionaries. In fact, all that is required here is a careful application of mind.

If the organisation concerned faces a real/genuine problem or difficulty in preparing charge-sheets in a particular case, the same can be taken up with the CBI appropriately. Needless to say that such instances/exceptions should be a few and far between i.e. exceptions only⁸¹. A specimen of Charge sheet is placed at **Appendix 'E'**

⁷⁶ No.3 (v)/99/8 Dated the 5th October, 1999

⁷⁷ S.K. Raheman vs. State of Orissa 60 CLT 419

⁷⁸ Uttar Pradesh vs. Salig Ram AIR 1960 All 543

⁷⁹ Meena Jahan vs. Deputy Director, Tourism 1974 2SLR 466 Cal

⁸⁰ Dinabandhu Rath vs. State of Orissa AIR 1960 Orissa 26

⁸¹ CVC letter No. 009/VGL/018 Dt. 1st April 2009

5.9 Issuance of Charge-sheet:

1. The appointing authority or any other higher authority has power to issue the charge-sheet⁸².
2. Charge-sheet can be issued by the disciplinary authority
3. Officers other than appointing or disciplinary authority competent to issue charge-sheet if authorized by Rules⁸³.
4. Charge-sheet can be given by competent authority through others⁸⁴.

5.10 Principle of bias is not applicable to the issue of charge-sheet:

If an authority is biased it cannot hold the enquiry. This however, does not affect his power to issue the charge-sheet.⁸⁵

It is not permissible to make any addition of charges in the original charge sheet during the course of the enquiry although some new facts and/ or allegation worth-mentioning may crop up or found. The new allegations may have been the good ground for procuring dismissal and even this new allegation have been mentioned and proved during the enquiry. In the said situation, the Enquiry Officer cannot give his findings on new facts and /or allegations which were beyond the purview of the charge sheet. Supreme Court has observed in the case of **Laxmi Devi Sugar Mills** that it is not open to the employer to add any further charges to the original charges during or after the enquiry and charges framed.⁸⁶ However, it does not preclude the industrial employer to frame additional charge sheet even after framing the original charge sheet if there are sufficient allegations. The Industrial Employer may issue even supplementary charge sheet, if the enquiry in terms of original charge sheet had not commenced⁸⁷.

“It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported” and a person who is competent to issue charge sheet sign the charge sheet⁸⁸.

5.11 Reference to report of Preliminary Enquiry:

All documents, which find a mention in the charge sheet, are to be produced during the course of the enquiry and are subject to inspection by the delinquent employee. There should not be any reference to a confidential or secret document in the charge sheet. The police reports and the reports received as preliminary enquiry are normally confidential and are not to be mentioned in the charge sheet.

5.12 Charge should be specific and contain the necessary particulars:

It is an elementary principle that when misconduct is alleged, complete particulars must be given. The delinquent official can deny his guilt and establish his innocence only if he is told

⁸² *Cui licet quod majus non debet quod minus est non licet* (He who has authority to do the more important act is not debarred from doing that of less importance)

⁸³ *Rajatkanti Godara vs State of W.B.* (1962) 2 LLJ 553 (Cal HC)

⁸⁴ *Laxmi Devi Sugar Mills Ltd. Vs Jadunandan Singh* (1965) 2 LLJ 250 (LAT)

⁸⁵ *State vs Karam Chand* AIR 1959 Punj 402

⁸⁶ *Laxmi Devi Sagar Mills Ltd vs their workmen*, 1959 LLJ Vol. II p. 679

⁸⁷ *Benoy Kumar Hazra vs Bank of India & Ors*, C.R No. 5638 (w) of 1976, Cal.

⁸⁸ *Meenglass Tea state vs Its workmen*. 1963 LLJ Vol. II p. 392 SC

what the charges leveled against him are, and the allegations on which such charges are based.

A statement of imputation of misconduct on which the article of charge framed against the delinquent official is based shall accompany a charge. The object of furnishing the statement of imputation to the delinquent official is to give him all the necessary particulars and details relating to the charge so that he will have sufficient opportunity to put up his defence. Hence the statement of allegations should give all factual details. It is however, not necessary to discuss the oral and documentary evidence in the statement of allegations. It is sufficient if the facts, which have been revealed from the oral and documentary evidence, are narrated in the statement of imputation.

Failure to give the details of the misconduct in the charge with regard to the date, time and place of misconduct, with sufficient particularity results in prejudice to the charged government servant in the matter of his defence at the enquiry.

Where the charge is vague and indefinite and statement of allegations containing necessary particulars is not furnished, the order-imposing penalty is liable to be quashed.

5.13 Charge should not express firm opinion:

The Charge should not contain any expression of opinion as that would create an impression in the mind of the charged official that the disciplinary authority is prejudiced against him.⁸⁹

BY Charge sheet Disciplinary Authority should neither propose nor indicate what punishment would ultimately be awarded. There is absolutely no need to mention the proposed punishment in the charge sheet as the nature of the penalty to be imposed will have to be decided only at the end of the enquiry depending on the gravity of the misconduct that is ultimately established as a result of the enquiry. If any particular punishment is indicated in the charge sheet, it cannot be said that the proceeding was conducted in an unbiased manner.⁹⁰

5.14 More than one charge can be included:

Where there are more transactions than one, it will be a mistake to frame only one charge. The reason is that such a charge shall be a heterogeneous one and it will not be easy for anybody, who reads the charge sheet, to understand it. The golden rule is to frame one charge for one incident. In case an employee has committed misconduct, more than once, in a similar fashion, despite the similarity in modus operandi, there is bound to be variations in the time, place, other material detail, and circumstances leading to the misconduct. In such cases, proper course of action shall be to allot to each such incident a separate paragraph in the statement of imputations, which should be a self contained and comprehensive one. In the Articles of charge, we can frame only one charge stating therein that he has committed misconduct by adopting such and such modus operandi, details of which are contained in such and such paragraph of the statement of imputations.

In **Kapur Singh v. Union of India**⁹¹, it was held that the enquiry cannot be held bad merely on the ground that more than three charges were made the subject-matter of one enquiry. The

⁸⁹ M.A.Narayana Setty Vs Divl. Manager, LIC of India, Cuddapah, 1991(8) SLR AP)

⁹⁰ Kesharimal Vs State of Rajasthan 1979, SLR (3) P.I

⁹¹ AIR 1956 Pun 58

Supreme Court, in **Khem Chand v. Union of India**⁹², held that there are two definite stages in the Enquiry viz., the service of the charge-sheet and the action proposed to be taken and that the second stage would arise only when the punishing authority has applied his mind to the entire evidence and arrived at a definite conclusion and that before that stage the charges are unproved and the suggested punishments are merely hypothetical.

5.15 Charge may be dropped and fresh charge framed:

It is open to the disciplinary authority to drop any charges framed in the first instance and to frame fresh charges which may be found necessary on further consideration.⁹³

5.16 Charge may be amended:

There is no objection to the Charge-sheet being amended by the Disciplinary Authority during the enquiry. In such a case the government servant should be given reasonable opportunity of meeting the amended charge by recalling the witnesses already examined or by producing new evidence. An alteration or addition or amendment of a charge is a matter of procedure and as long as sufficient notice of such alteration, addition or amendment is given and sufficient opportunity is given to the delinquent officer to meet the same, there will not be any violation of the principles of nature justice. It is in order to issue a supplementary charge-sheet or issuance of corrigendum. If a major amendment to the charge is required to be made then it is better to cancel the first charge and issue a fresh Charge-sheet.

However where charge is amended by the issue of a corrigendum during the course of the Enquiry, failure to permit the charged official to file a reply to the amended charge and give him an opportunity to defend himself vitiates the Enquiry proceedings and an order of termination is liable to be quashed.

5.17 Reference to Secret or Confidential Documents:

A charge sheet is a public document and, therefore, must not contain any reference to a secret or confidential document, which shall not be in public interest to disclose.

5.18 Provision of CDA Rules 1984:

Rule 17 of the CDA Rules 1984, describes the modalities for service of the Charge-sheet. The common method of the serving a Charge-sheet is by personal service. This is done by sending the Charge-sheet in duplicate to the delinquent and getting his signature in the office copy of the Charge-sheet. If the employee refuses to accept the Charge-sheet, such refusal shall be deemed to be a good service upon him, provided such refusal takes place in the presence of at least two persons including the person who goes to effect service upon him. Where, however, the charge-sheet cannot be handed over in person, it is advisable to send it under registered post with acknowledgement due, to the latest available address of the employee in the official

⁹² AIR 1958 SC 300

⁹³ In *Binod Chandra Mazumdar v. Union of India*, AIR 1960 Pun 147, after an Enquiry Officer was appointed, the Government stayed the proceedings, placed the delinquent Officer under suspension and after some time issued a fresh charge-sheet containing new charges. This was done when a writ petition was pending in the High Court challenging the earlier orders. The High Court upheld the action taken by the Government.

records. If the Charge-sheet has been returned un-delivered (Sent by registered AD Post) with the postal authorities remarks 'left', 'not found', 'refused', etc, the cover should be preserved intact and there is no need to open it. In the case of Registered Letter, it is always presumed that the same has reached the addressee unless it is rebutted by clear and cogent evidence. Where the registered covers are returned with the endorsement 'refused' the presumption is that the cover was presented to the addressee but was not accepted. In effect this can be treated as a Valid Services. If however, the postal authorities have returned the registered cover with the endorsement 'not found', 'left', etc., it means that they (postal authorities) were unable to contact the addressee, and in the absence of any evidence regarding avoidance of service, there is no due service of charge.

As soon as the charge sheet is issued, the delinquent official should be called upon to file a written statement of his defence within such time as may be prescribed under the rules. This is a mandatory provision and if the enquiry is proceeded without giving opportunity to the delinquent to file his written statement of defence, the enquiry will be vitiated.

A minimum of seven days time will be given to the charge-sheeted employee to enable him to submit his written explanation. The charge sheet should be served in person and his signature obtained in the duplicate copy as acknowledged. In case of refusal to accept or acknowledge the receipt of charge sheet, the following actions are required to be taken:

- (a) Endorsement of refusal to accept or acknowledge receipt of charge sheet by the serving officer in the presence of two witnesses.
- (b) Sending a copy of the charge sheet to last known residential address of the charge-sheeted employee by registered post acknowledgement due and also under Certificate of Posting.
- (c) Display of the copy of the charge sheet on the Departmental Notice Board and making an endorsement to that effect.
- (d) Publication of the charge sheet in the local newspapers is also considered as the charge sheet having been served.

Where the charged officer was not supplied with copies of relevant documents or allowed to inspect them or not furnished copies of statements of witnesses examined at the inquiry, it was held that effective exercise of the right to cross-examine witnesses was denied to him.⁹⁴

5.19 Company Policies on drafting and issuance of Charge Sheet:

⁹⁵ Draft charge sheets pertaining to Vigilance cases, wherever General Managers are the Disciplinary Authority will be forwarded to Divisional Vigilance Heads for vetting before issue and in other cases where Managing Director/ Functional Directors and Chairman are Disciplinary Authority the same will be forwarded to the CVO, Corporate Office for vetting before issue.

⁹⁶ In respect of all employees upto Grade V, the draft charge-sheets forwarded by DA will be vetted and submitted to the DA by the respective Complex Vigilance HoD's. In respect of executives of Grade VI and above, the draft charge sheets will be forwarded to Corporate Vigilance for vetting. Cases involving more than one employee, wherein one of them is Grade VI

⁹⁴ Kashinath Dikshitha Vs. UOI 1986(2), SLR 620-SC

⁹⁵ HAL/P&A/19(3)/2010 dated 18th October 2010

⁹⁶ HAL/CO/VIG/47/2012/2054 dated 24th July 2012.

or above, the draft charge sheets of all the persons involved in the case will be forwarded to Corporate Vigilance for vetting.

⁹⁷At the time of vetting of charge sheets following aspects will be kept in mind:

(a) There is no ambiguity in framing of Charge sheet. If there is one, the same may be removed and clarity brought out.

(b) All important aspects of irregularities/ deviations/ lapses are brought out in the misconduct of each individual in the "Imputation/ Articles of Misconduct".

(c) The list of documents and witnesses on which case is to be relied upon are carefully scrutinized and annexed.

(d) It will be ensured that a note at the end of list of witnesses /documents is added as under: "Management reserves the right to produce further documents and witnesses as and when required during the progress of the DEC".

(e) Difficulties experienced in vetting of charge sheets, if any, may be brought to the notice of Office of CVO for clarification and guidance.

⁹⁸Issuance of Charge-sheet on transfer – The transferor division will initiate the disciplinary action by issuance of charge-sheet.

5.20 Issuance of Charge-sheet by the transferor Division against the delinquent employee: Company Policy⁹⁹

It has been brought to notice that employees against whom Vigilance cases / enquiries have been initiated are being job rotated / transferred to other Divisions before the disciplinary action could be initiated / finalized. This is resulting in avoidable delays in follow up and consequent conduct of an enquiry, besides avoidable expenditure incurred on account of to and fro movement of delinquent employee / witnesses.

2. Since most of the witnesses and relevant documents etc. pertaining to the case are available in the transferor Division, it is desirable that the enquiry is conducted, finalized and punishment imposed, wherever applicable before effecting the job rotation / transfer of the concerned employee from the Division / Complex.

3. Accordingly, in all cases, where Vigilance Report advising domestic enquiry against an employee has already been received, it would be mandatory for the parent Division / Complex to conduct and complete the enquiry, prior to effecting job rotation / transfer of the employee concerned. However, in case transfer / job rotation of the concerned employee is unavoidable, prior concurrence of the Local Head of the Vigilance in respect of Employees / Officers up to Grade IV, and Chief Vigilance Officer in respect of Officers in Grade V & above should be obtained.

⁹⁷ HAL/CO/VIG/47/2002/1118 dt 19th June 2002

⁹⁸ HAL/P&A/19(3)/2005 dt. 16.8.2005

⁹⁹ HAL/P&A/19(1)/2000 dt 02 Mar 2000

5.21 Response to the Charge Sheet:

On receipt of the charge sheet, the charge-sheeted employee may respond in the following manner:

- (a) Submit his explanation refuting the charge.
- (b) Submit his explanation admitting the charge and asking for mercy.
- (c) Fail to submit the explanation.
- (d) Submission of explanation with conditional admission of charges.
- (e) Partial admission of charges.

In case the charge-sheeted employee requests for grant of time for submission of written explanation, the same could be allowed if considered necessary. In any case, the time allowed for submission of explanation shall not exceed 30 days from the date of issue of charge sheet. In case the charge-sheeted employee makes a request for copies of documents / inspection of documents, the same could be allowed.

If an employee fails to reply to the charge-sheet it does not lead to any presumption that he is guilty of the alleged misconduct. The enquiry is still necessary because the purpose of enquiry is to satisfy the Disciplinary Authority that charge can be substantiated through evidence.

5.22 Consideration of Explanation from Charge-sheeted Employee:

On receipt of written explanation from the charge-sheeted employee, the Disciplinary Authority has to consider the same with reference to the allegations as mentioned in the charge sheet. The disciplinary authority will have to consider whether the explanation submitted by the employee is satisfactory. If he finds that the explanation given by the employee is satisfactory, he may drop the charge and may not proceed further with disciplinary action. In case the charge-sheeted employee admits the guilt or not the Disciplinary Authority could proceed to impose punishment if it is minor in nature. In cases where the charge-sheeted employee admits the guilt and the Disciplinary Authority proposes to impose a major penalty, the charges are required to be established before an enquiry committee and then take a final decision based on the findings of the Enquiry officer.

Where the charge-sheeted employee does not submit any written explanation, or admits the guilt with certain conditions, or admits partially the charges or denies the charges in Toto, or the explanation is not found to be satisfactory, the Disciplinary Authority may order a domestic enquiry to ascertain the truth of the alleged misconduct.

CHAPTER – VI

ENQUIRY PROCEEDING¹⁰⁰

“Reason and free inquiry are the only effectual agents against error.”

- Thomas Jefferson

If the officer accepts his guilt, no further enquiry is necessary. However, the acceptance of charge should be both unconditional and unambiguous¹⁰¹. Similarly, where the Competent Authority comes to the conclusion after consideration of the explanation of the officer that only minor punishment is warranted in the case, he may award the appropriate minor punishment without conducting enquiry.

6.1 Innocuous position:

When the disciplinary action is contemplated /or departmental enquiry is pending, it may be necessary sometimes to remove a suspected employee from the sphere of his activities and the purpose can be served by transferring him to another department/ branch devoid of all his discretionary powers, instead of suspending him during the enquiry. This action is known as putting the employee in an innocuous position.

6.2 Constitution of Departmental Enquiry:

If no explanation is received from the officer charged within the time specified or in cases of conditional acceptance or denial without any convincing reason or where the Competent Authority on receipt of the explanation of the officer comes to the conclusion that further proceedings are called for, such authority may appoint in writing an Enquiry Officer or Enquiry Committee of one or more members to hold enquiry into the charge against the officer.

6.3 Appointment of Enquiry Officer/ Presenting Officer:

The Disciplinary Authority should consider all relevant aspects about the official to be appointed as I.O. /P.O. in a particular case, with particular reference to his/her continued availability to complete the inquiry proceedings. It should be ensured that only such officials, who are not likely to be transferred during the pendency of the inquiry proceedings, are appointed as P.Os./I.Os. In extreme cases where the transfers are unavoidable, it should be ensured that the I.Os./P.Os complete the inquiry proceedings as expeditiously as possible, before they are relieved or at the earliest after their relief. It should also be kept in view, that to the extent possible, an official of appropriate seniority, with reference to the status of the charged official, is appointed as the P.O¹⁰².

¹⁰⁰ Guidelines and procedures for Domestic Enquiry has been provided vide HAL/PO/18(62)/78/4023 DT 10.11.1978. These Guidelines, however, are very short. The elaboration discussed in this chapter is based on commentaries on CCA Rules along with ratios from various courts judgements.

¹⁰¹ N Nariman vs. Transport Department Madras 1986 (2) SLR 560-MAD

¹⁰² CVC letter No. 006/PRC/1 Dt. 21st September 2006

6.4 The Enquiry Officer:

The role of an Enquiry Officer is a fact finding one in course of which evidence is produced before him in regard to the truth of allegation and the facts contained in the Charge-sheet. He has a duty to conduct the Enquiry in an orderly manner, to act judiciously and to apply his own mind to the evidence brought before him and give his findings after proper assessment of evidence.

The officer selected should be of sufficiently senior rank and one who is not suspected of any prejudice or bias against the charged Public servant and who did not express an opinion on the merits of the case at an earlier stage. He should be an open-minded person, a mind which is not biased against the delinquent or Management. He should not pre-judge the issue and should not be an eyewitness of the incident relating to the alleged misconduct. He should act with the detachment of a judge and should strictly confine himself to the evidence before him. He should follow the principles of Natural Justice while conducting the enquiry.

The function of IO cannot be delegated.

An independent Officer of the Company can head the Departmental Enquiry Committee (DEC). The DEC can also be headed by a retired officer of HAL as well as of other Organisations duly recognized by the Management. Where complicated nature of misconduct is involved, the DEC could consist of more than one Officer.

An Officer who is a witness cannot be the Enquiry Officer. This is contrary to rules of natural justice because a person who is entrusted with the inquiry cannot both be a judge and a witness.

Furthermore an Officer who has something to do with the case earlier or who had framed the charges or formed an opinion cannot be appointed as Enquiry Officer. He would have bias in the case. It is equally well settled that it is not in such a case necessary that in fact there has occurred any prejudice to the delinquent Officer. If there is a likelihood of bias or even possibility or risk of it, is enough to quash the proceedings on the ground of bias. It goes to the very root of the jurisdiction of the Enquiry Officer.

The Enquiry Officer is a Quasi Judicial¹⁰³ Authority. He is deemed to be appointed in his individual capacity and not by virtue of his office. In normal circumstances the Enquiry Officer should not be changed till the enquiry for which he is appointed comes to an end. However, in certain circumstances such as transfer or other unforeseen administrative reason, an Enquiry Officer can be changed.

Welfare Officers notified under the Factories Act 1948 are not to be appointed as Enquiry / Presenting Officer in case of workmen.

An order appointing enquiry Officer should not be signed by anyone other than the Disciplinary Authority.

¹⁰³ "quasi" means "not exactly". A quasi judicial decision is one which has some attributes of a judicial decision but not all. An authority exercising quasi judicial function may depart from the usual forms of legal procedure or from the rules of evidence, but it cannot depart from the principles of natural justice.

Where the disciplinary proceedings are initiated in consultation with or at the instance of Central Vigilance Commission, the Competent Authority may appoint a Commission nominated by the Central Vigilance Commission to conduct the enquiry.

6.5 Utilizing the services of outsiders including retired officers for conducting Departmental Inquiries

The disciplinary authority may appoint outsiders including retired officer as Enquiry Officer with the approval of the CVO.

In case the CVO does not agree to his appointment as Enquiry Officer and the DA/management insist on his appointment, only then the approval of the Commission should be sought.¹⁰⁴

Further the departments/public sector undertakings/organisations depending upon their need, and if they so desire, may maintain a panel of retired officers from within or outside the department or organization for appointment as inquiring authorities, in consultation with the Chief Vigilance Officer. In case, there is difference of opinion between the Disciplinary Authority and the Chief Vigilance Officer about the inclusion of any name in the panel or appointment of any one out of the panel as IO in any case, the CVO may report the matter to the next higher authority, or the CMD for the resolution of the difference. If still unresolved, the CVO may refer the matter to the CVC. A case of difference of opinion between the CVO and the CMD, if acting as Disciplinary Authority, may be referred to the Commission for its advice^{105, 106}.

In the case of **Ravi Malik Vs. National Film Development Corporation Ltd**¹⁰⁷., the Supreme Court in their judgment delivered on 23.7.2004 have inter-alia held that “the words ‘public servants’ used in Rule 23 (b) of the NFDC Service Rules and Regulations, 1982 mean exactly what they say, namely, that the person appointed as an Inquiring Officer must be a servant of the public and not a person who was a servant of the public. Therefore, a retired officer would not come within the definition of ‘public servant’ for the purpose of Rule 23(b)”.

Rule 14(2) of the CCS (CCA) Rules, 1965 provides that “Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Public servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof”.

CVOs of organisations (other than those, which follow CCS (CCA) Rules, 1965) are required to review the service rules and regulations of their organisations and take necessary measures to amend the provisions relating to appointment of Inquiring Authorities, if they are inconsistent with the provisions under Rule 14(2) of the CCS (CCA) Rules, 1965. If any Service/Departmental Rules are in conflict with appointment of retired persons as Inquiring Authorities, they should be suitably amended before any such appointments are made¹⁰⁸.

The terms and conditions for appointing retired officers as EO notified vide CVC letter No 98/MS/23 dated 16 Sep 1999 is placed at **Appendix ‘F’**

¹⁰⁴ CVC letter No. 98/MS/23 Dt.25th March 2003

¹⁰⁵ CVC letter No. 98/MS/23 Dt. 1st August 2003

¹⁰⁶ DOPT OM No 142/15/2010 – AVD- I Dt. 31st July 2012

¹⁰⁷ Civil Appeal No. 4481 of 2004

¹⁰⁸ CVC letter No. 004/VGL/63 Dt. 18th November 2004

6.6 CVC on appointment of inquiry officers¹⁰⁹:

The Central Vigilance Commission has issued instruction under its order No 8(1)/(h)/98(1) dated 18/11/98 to all Departments/Organisations to review all pending cases for departmental enquiries and appoint Inquiry Officers from amongst the retired honest employees / officers for conducting the enquiries (Para 2.3 of the said instruction refers). The Commission had also instructed therein that the names of the retired officers for conducting inquiries may be got cleared from the Commission.

2. The Commission has further examined the matter and the following decision has been taken for strict compliance:

- (i) All Departments/Organisation who are already having the panel of retired officers may utilize their services after ensuring that such officers possess a clean track record; and
- (ii) All Departments / Organisations who do not have any panel of retired officers for conducting Departmental Inquiries may approach the Commission for the same.

3. However, it is to be ensured that the instruction to complete the inquiry within the stipulated time limit of six months has to be complied with invariably in all cases.

6.7 Status of CDIs vis-à-vis the Charged Employee:

In one of the cases, it has been brought to the notice of the Commission that in a case, on an appeal filed by the delinquent official, UPSC had advised setting aside the penalty imposed upon him on the ground that there was a serious procedural infirmity in the inquiry in as much as, the Inquiry Officer appointed in his case i.e., Commissioner for Departmental Inquiries was junior to the Charged Employee, the UPSC had observed that the appointment of a officer junior to the Charged Employee was in contradiction of the DOPT's instructions contained in their office Memorandum dated 06.01.1971. These instructions provide that the inquiries should be conducted by an officer who is sufficiently senior to the officer whose conduct is being inquired into. The matter was referred to the Department of Personnel & Training with the above observations for examination in consultation with the Ministry of Law.

2. The Department of Personnel & Training have since examined the matter in consultation with Ministry of Law. It has been clarified that instructions dated 06.01.1971 had been issued in the light of recommendation of the Committee on Subordinate Legislation (Fourth Lok Sabha) and not on the basis of any legal requirement in the matter. Further the Committee's recommendations were in the context of the inquiries held in the Department against non-gazetted officers. The Law Ministry has, therefore, agreed with the view that when Inquiry Officer is a Commissioner for Departmental Inquiries of Central Vigilance Commission, he can be regarded as a "disinterested officer" and his being junior to the charged officer does not bear much significance as he cannot be suspected of having any bias in the case. Moreover, the CDIs being from an independent organization outside the Department of the charged officer, the question of Junior/Senior need not be raised¹¹⁰.

¹⁰⁹ CVC letter No 98/MS/23 dated 04 Mar 1999

¹¹⁰ Authority: CVC letter No 000/VGL/57 dt 28 Nov 2000

The EO must also ensure that the conclusions reached by him must be reasonable and there must be identifiable relationship between:

- a. The charges
- b. The evidence led at the enquiry, and
- c. The conclusions reached

For this, the Enquiry Officer has to:

- a. Record the evidence
- b. Make analysis
- c. Record the findings, and
- d. Submit his report to the DA.

6.8 Appointment of the Presenting Officer:

The Disciplinary Authority may appoint in writing an officer of the Company or other person who is not HAL employee, as he may deem fit as 'Presenting Officer' to present the case on behalf of such authority.

Ordinarily an Employee belonging to the departmental set up who is conversant with the case will be appointed as the Presenting Officer except in cases involving complicated points of law where it may be considered desirable to appoint a legal practitioner to present the case on behalf of the disciplinary authority. An officer who made the preliminary investigation or inquiry into the case should not be appointed as Presenting Officer.

As the appointment of a Presenting Officer would help in the satisfactory conduct of departmental inquiry, the Central Vigilance Commission has advised that even in cases where the disciplinary rules do not contain a specific provision for the appointment of a Presenting Officers, the disciplinary authorities may consider appointing a Presenting Officer for presenting the case before the Inquiring Authority.

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

The Functions of the Presenting Officer can be broadly summarized as under:

The presenting officer should be fully conversant with the rules and procedures alleged to have been violated by the charged official/employee and also about the procedure to be followed at the enquiry regarding introducing evidence.

Before the preliminary hearing he should understand the charges and analyze them to determine the facts to be proved and the evidence necessary for proving them. He should identify all the oral/documentary evidence and also determine the purpose of each identified witness.

He should anticipate the possible defence that will be taken by the charged official/employee and decide the manner in which he will counter the defence.

He should, if necessary, collect the information/documents from appropriate officers for understanding the case. In case any additional evidence is considered necessary, immediate action should be taken to introduce the same.

He should ensure availability of originals of the listed documents and work out suitable schedule for inspection of documents. He should also contact all the witnesses well in advance and ask them to be in readiness to appear at the enquiry. In case there are several witnesses to prove a point, he should decide as to whether all the witnesses are required or some of them are sufficient.

He should observe the proceedings with regard to appointment of Defence assistant, ensuring conformity to rules. He should be present at the preliminary hearing and should be prepared to supply copies of statements of witnesses and other documents to the CO if need arises. Inspection of additional documents that are demanded by the CO at the enquiry can also be taken care of by the PO.

He should ensure that documents presented for inspection are not tampered with. The same should be done in front of EO and no photocopies of documents should be given by him to CO/Defence Assistant without permission from the competent authority.

If during the examination-in-chief of a prosecution witness, the PO feels that the witness is hostile or that his testimony is likely to affect the prosecution case or that the witness is knowingly not telling the truth, he may seek the permission of the EO to cross-examination that witness after he has been declared hostile. In such situations, the PO may, with the prior permission of the EO, also put leading questions to the witness so as to bring out the truth.

Where the PO has to provide written briefs, he should do so without delay. Since the rules provide for the submission of a written brief, he should be in a position argue out his case in his oral summing up and thereby avoid the delay in submission of a written brief.

The Presenting Officer should avoid taking adjournments without valid reasons. Failure to present the case properly is liable to be considered as dereliction of duty.

The presenting Officer should confine himself to the charge leveled against the delinquent in the charge sheet. The sole duty of the Presenting Officer is to make an honest effort to prove the charge, by identifying the documents and witness/es for each issue.

The Enquiry Officer may in his discretion, allow the Presenting Officer to produce evidence not included in the list of witnesses or may call for additional evidence-recall or re-examine any witness. In such a case the charge-sheeted employee shall be given opportunity to inspect the documentary evidence before it is taken on record or cross –examine a witness who has been so summoned.

6.8.1 Papers to be supplied to the Presenting Officer

The disciplinary authority shall supply the following papers to the presenting officer along with his order of appointment.

- a) A copy of the articles of charge and the statement of the imputations of misconduct or misbehavior.
- b) A copy of the written statement of defence, if any, submitted by Charged Employee

- c) Copies of the earlier statements of witnesses mentioned in the list of witnesses,
- d) Evidence proving the delivery of the charge sheet to Charged Employee
- e) A copy of the order appointing the inquiry officer
- f) List of witnesses or list or documents by which the charges are proposed to be proved by the Management along with the documents.

In addition, the presenting Officer should be equipped with (i) the relevant Disciplinary Rules containing the prescribed procedure for inquiry and (ii) some manual or guide book containing law, procedure and guidelines relating to the holding of inquiry so that he can function in an effective manner.

In case the Presenting Officer desires that for his effective presentation of the case, certain documents lying with the outside agencies are required, then he has to arrange for collection of the original documents or inspection of the said documents for comparison of copies by the defence representatives/ Enquiry Officer.

After studying the facts, the Presenting Officer should co-relate each item of evidence and if necessary he may try to obtain more information on the subject matter of the case.

Presenting Officer's role is akin to that of a public prosecutor. His endeavour will be to establish the charges by leading evidence on behalf of the DA. While the EO is required to be impartial to the case, there is no such requirement in respect of the Presenting Officer.

An Officer who has investigated the case and who is also a witness should not be appointed as the presenting Officer as the combination of three functions in one Officer, namely investigation, presentation and appearance as witness, is undesirable.

Appointment of a Presenting Officer is not at all obligatory. Non-appointment of a Presenting Officer and examination of witnesses by the Enquiry Officer does not vitiate the Enquiry.

6.9 Appointment of PO in the cases investigated by the CBI: DOPT directive¹¹¹

1. A disciplinary authority is empowered to appoint a 'Government Servant' as a 'Presenting Officer' in the departmental proceedings initiated against Government servants, to present its case, before the Inquiring Authority, in support of the articles of charge, in terms of Rule 14(5)(c) of CSS(CC&A) Rules, 1965 or under similar other Rules. In the cases investigated by the CBI the Disciplinary Authority is required to appoint an officer nominated by the CBI as the Presenting Officer in terms of Para 24 of Single Directive.

2. In the Conference of CVOs of the Western Region held at Bombay on 5th December 1992, a suggestion was made that the Presenting Officer, even in the above type of cases also should be appointed from the same department, in order to ensure expeditious finalization of the disciplinary proceedings.

3. The above suggestion of the CVOs has been examined in consultation with CBI and it has been decided by the Government to accept the same on an experimental basis. To begin with the Disciplinary Authorities may appoint their own officers as Presenting Officers in disciplinary proceedings, relating to non-gazetted officers, depending upon the merit of each case, even though the investigations of such cases may have been conducted by the CBI.

¹¹¹ DOPT O.M. NO 321/62/93-AVD.III DT 06 Dec 1993

6.10 Cooperation of all Presenting Officers in inquiry proceedings¹¹²

1. It has come to the notice recently, in a few cases wherein enquiries were being conducted by COI for Departmental Enquiries that the Presenting Officers of the concerned organizations are not cooperating with the Inquiry Officers in early disposal of the cases.

2. It is once again reiterated that the stipulated time period for completion of an Inquiry is six months and it is the duty of every Presenting Officer to ensure that the Inquiry is not delayed due to non cooperation on his part.

3. The Presenting Officers may also be asked to send regularly the latest position of their cases to the Vigilance Division of the Ministry of Defence so that we can keep a track of the Inquiry proceedings.

4. The officer charged should be informed in writing of the date and time when the enquiry will be held and it shall be obligatory on the part of the officer to present himself before the Enquiry Officer/ Enquiry Committee at the appointed time¹¹³.

6.11 Documents to be forwarded to the Enquiry Officer:

As soon as the order of appointment of the Enquiry Officer is issued, the disciplinary authority will forward to him and the EO will take cognizance of the following papers along with that order:

- i. A copy of the articles of charge and the statement of imputations of misconduct or misbehavior;
- ii. A copy of the written statement of defence submitted by the Public servant. If the charged Public servant has not submitted a written statement of defence, this fact should be clearly brought to the notice of the Inquiring Authority;
- iii. List of witnesses by whom the articles of charge are proposed to be sustained;
- iv. A copy each of the statement of witnesses by whom the articles of charge are proposed to be sustained. In the case of common proceedings, the number of copies of the statements of witnesses should be as many as the number of accused Public servants covered by the inquiry;
- v. List of documents by which the articles of charge are to be proved;
- vi. A copy of the Covering Memorandum to the Articles of charge addressed to the Public servant concerned;
- vii. Evidence proving the delivery of the documents to the Public servants. The date of receipt of the document by the charged officer should be clearly indicated. The date of

¹¹² MOD I.O. No PC to F.No.C-300020/4/Vig/87 dt 02 Sep 88

¹¹³ In the case of State of U.P. v. Gulab Shankar Srivastava 2003 (97) FLR 69. the date, time and place of enquiry was not communicated to the delinquent employee. The court held that this itself vitiated the whole enquiry being in violation of the principles of Natural Justice.

receipt of the articles of charge by the Public servant will need to be taken into account by the Inquiring Authority in fixing the date of the first hearing;

- viii. A copy of the order appointing the Presenting Officer;
- ix. Bio-data of the officer.

6.12 Initiation of proceedings of the Departmental Enquiry:

On receipt of the order for Departmental Enquiry, the EO will issue the enquiry notice addressed to the charge-sheeted employee with a copy to the Presenting Officer. The date, time and place of the first meeting of the departmental enquiry committee will be indicated in the enquiry notice. The enquiry notice should also indicate that the charge-sheeted employee is permitted to take the assistance of a co-employee to defend his case before the enquiry committee if he so desires. The co-employee should be working in the Division where the charge-sheeted employee is working. He shall not however take the assistance of any officer who has two pending disciplinary cases on hand in which he is functioning as co-officer. Normally he shall not also be entitled to engage a legal practitioner for this purpose.

Cases involving more than one employee where the charges alleged are similar, the Disciplinary Authority may order for a common enquiry.

The EO is required to maintain a record of the progress of the case in the form of **Daily Order Sheet**¹¹⁴. A specimen copy of the Notice of Enquiry is placed at **Appendix 'G'**.

6.13 Fixation of date and venue of hearings:

There is no strict rule for selecting the place where the enquiry should be conducted. It may be fixed after taking into consideration the convenience of all the parties. Normally, the venue of the enquiry should be at the place of occurrence of the misconduct. The enquiry can be conducted at a different place, as long as it is reasonably possible for the employee to attend at that place.

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

Choosing of the venue of an enquiry against an employee *suo moto* by the enquiry Officer does not vitiate the enquiry and does not violate the principles of natural justice. There cannot be any hard and fast rules as to where the enquiry against an employee is to be held and the only thing to be seen is whether the employee is in any way denied the opportunity of defending himself because the enquiry Officer *suo moto* chose the venue of the enquiry.

¹¹⁴ A Daily order sheet is a brief narration of the days happenings in the enquiry. Whenever there is a progress in the case, it is to be recorded in daily order sheet, further during the progress of the case also the EO will keep as making daily order sheet indicating progress, such as, taking over of documents, examination of witness, receipt of any request from CSE etc.

The Enquiry Officer will also intimate the Presenting Officer in regard to the date, time and place of the preliminary hearing. The Presenting Officer will bring with him copies of the statements of the listed witnesses and the listed documents

In the Divisions / office a separate room with necessary facilities like furniture, typist/Computer operator etc. has to be provided for the conduct of DEC.

The officer charged along with his co-officer will be entitled to be present during the hearing of witnesses. Evidence shall be taken in their presence except in ex parte proceedings. Should the officer so charged fail to attend the enquiry or after attending it, refuses to take part in the enquiry, the Enquiry Officer/ Enquiry Committee will conduct ex- parte proceedings after recording the reasons therefore.

6.14 Preliminary Hearing:

On the date fixed by the Enquiry Officer/ Enquiry Committee the officer shall appear before that enquiry authority at the time, place and the date specified in the notice. The Enquiry Officer will explain the procedure that will be followed while conducting the enquiry i.e. the manner in which the evidence will be recorded, relying upon the documents in support of charges as well as defence. The enquiry proceedings will commence with the reading out of the charge sheet to the charge-sheeted employee. Further the Enquiry Officer will explain to the charge-sheeted employee the various opportunities such as availing the assistance of co-employee, furnishing of copies of documents, list of witnesses, cross-examination of the witnesses, production of witnesses, documents in defence, self examination and submission of final statement of arguments. Later, the charge-sheeted employee will be asked whether he has received and understood the contents of the charge sheet. The charge-sheeted employee is also required to be given another opportunity to either corroborate the explanation submitted by him or to alter the explanation already submitted and the same has to be recorded.

The Enquiry Officer/ Enquiry Committee shall ask the officer whether he pleads guilty or not.

If the accused employee admits the charges in clear and unconditional terms, no further enquiry is required to be conducted. The Enquiry Officer/ Enquiry Committee shall record the same. Sign the proceedings and obtain the signature of the employee concerned thereon. The Enquiry Authority shall return a finding of guilt in respect of those articles of charge to which the officer concerned has pleaded guilty.

However, such admission should be

- a) with reference to the charges
- b) both of facts and guilt
- c) voluntarily without coercion
- d) knowing clearly the consequences thereof
- e) be unconditional and unambiguous

The admission in the case of a workman must be before the Enquiry Officer if the punishment of discharge/ dismissal is to be awarded. The statement of admission cannot be relied upon for the purpose of proving the charge if the workman resiles from the confession before the Enquiry Officer.

If the Officer charged does not plead guilty, the Enquiry Authority shall continue with the enquiry.

If the Public servant fails to appear on the date and time fixed for the hearing or appears but refuses or omits to plead or pleads not guilty, the Enquiry Officer will ask the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge and will adjourn the case to another date.

The disciplinary authorities should be kept posted with the progress of oral enquiries. The Presenting Officer should send brief reports of the work done at the end of each hearing to the disciplinary authority.

6.15 Allegation of bias against EO:

If the charged employee alleges bias against the E.O, the E.O should keep the proceedings in abeyance and refer the matter to the disciplinary authority. He should resume the inquiry only after he is advised by the disciplinary authority to go ahead with the inquiry. In case, the C.O moves an application to the appellate/reviewing authority against the appointment of a particular Inquiry Officer, the proceedings should be stopped and the application along with other relevant material be referred to the appropriate appellate authority for consideration and appropriate orders.

6.16 Inspection of documents by the Charged Employee:

While adjourning the case, the Enquiry Officer will also record an order that the accused employee may, for the purpose of preparing his defence:

- i) Inspect, within 5 days of the order or within such further time as the Enquiry Officer may allow, the documents mentioned in the list of documents sent to him with the articles of charge, and
- ii) Submit a list of witnesses to be examined on his behalf together with their full addresses, indicating what issues they will help in clarifying. While asking for such documents, the Public servant will also include the relevance of the documents to the presentation of his case.

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

On receipt of requisition from the Enquiry Officer, the authority having the custody of the requisitioned documents will produce them before the Enquiry Officer on the specific date. However, if the Head of Department is satisfied, for reasons to be recorded by it in writing, that the production of all or any of the documents will be against the public interest or prejudicial to the security of the State, it will inform the Enquiry Officer accordingly and the Enquiry Officer is bound by the decision of the authority claiming the privilege. Such documents need not be produced. Documents of this category include the file dealing with the disciplinary case against

the Charged Employee, advice of the Central Vigilance Commission, advice of the Law Department or the Legal Adviser of the Undertaking and Character Roll of the employee.¹¹⁵

After the inspection of the documents, the Charged Employee will report to the EO on the date and time fixed. The EO will ascertain the outcome of the inspection i.e. whether the Charged Employee disputes the genuineness of any of the documents.

6.17 Supply of copies of documents to the Charged Employee

If the documents of which Photostat copies are asked for by the Charged Employee are considered by the Enquiry Officer to be vitally relevant to the case of the accused, for example, where the proof of the charge depends upon the proof of the hand-writing or where the authenticity of a document is disputed, Enquiry Officer should himself get Photostat copies made and supply the same to the Charged Employee.

6.18 Documents held up in Courts:

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

6.19 CVC directives:

6.19.1 On Certified photocopies of documents

As per the extant instructions, while the CBI can pursue the prosecution cases in the Courts, simultaneously departmental inquiries can also be held. In order to ensure that the critical documents needed in the departmental inquiries are made available, the responsibility has been put on the CBI to make photocopies of seized documents within four days so that the departmental proceedings can be proceeded with. A large number of cases are pending for more than two years because of non-availability of documents for inspection, which are already before the Court.

The CBI should make legible certified photocopies of all the documents, which they seize, for launching the prosecution against the charged officer to concerned departments. It is also the responsibility of the CVOs to ensure that these certified legible photocopies of documents are made available when the CBI seizes the documents in any Government organisation. This is applicable to all Government organisations, Public Sector Undertakings and Banks.

¹¹⁵ Denial of access to documents which have a relevance to the case will amount to violation of the reasonable opportunity mentioned in Article 311 (2) of the Constitution. Access may not, therefore, be denied except on grounds of relevancy or in the public interest or in the interest of the security of the state. The question of relevancy has to be looked at from the point of view of the Public 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 Public 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.

6.19.2 On making availability of documents to CDIs/IOs

In many cases the concerned departments do not make the documents available during the departmental inquiries conducted by the Commissioner for Departmental Inquiries (CDIs). This may be either due to inefficiency or collusion. There have been a lot of cases where important/critical files have disappeared. As failure to safeguard documents is an offence it has been decided that henceforth the following practice will be adopted by all concerned,

The Enquiry Officer/CDI will ask the concerned departments to produce the documents within a time limit fixed by the IO/CDI. While doing so it will be indicated that if within the stipulated time frame the concerned department is not able to produce the documents the disciplinary authority will fix responsibility for the loss of the documents and compliance reported to the Commission within a period of 3 months. These documents would cover not only those listed in the charge-sheet but also additional documents as sought out by the charged officer and permitted by the Inquiring Authority.¹¹⁶

6.20 Production of Witnesses/Documents:

The Enquiry Officer advises the Presenting Officer to lead the prosecution evidence by producing the prosecution witnesses and documents. Any document, which is relied upon by the prosecution, is taken on the record of enquiry committee as prosecution exhibits and marked as prosecution exhibit serially.

Example:

- (i) Charge Sheet – Exhibit P-1,
- (ii) Explanation from the Charged Employee– Exhibit P-2 and so on.

The EO has to affix his initials beneath the marking of the exhibits and it is advisable to obtain the initials of the Charged Employee also, so that later, allegations of tampering are not made. Where original documents cannot be parted with, the Photostat copy of the documents should be taken on record after verifying the same with the original if available. However the documents produced by either party are open to scrutiny by the Committee.

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

The specimen copy of preliminary hearing and the specimen copy for other regular hearings are placed at **Appendix – ‘H’** and **Appendix – ‘I’** respectively.

6.21 Witnesses in the enquiry

The following witnesses, as applicable, may be examined before the Enquiry Officer/ Enquiry Committee:-

- (a) Those upon whose testimony the charge was based.

¹¹⁶ CVC letter NO.3(v)/99/7 Dt. 6th September 1999

- (b) Those whom the officers charged may bring forward as witness in his defence. The persons charged will be required to indicate the points on which such witnesses give evidence and it is open to the Enquiry Officer/ Enquiry Committee on scrutinizing the list where it appears to be vexatious or frivolous, to restrict this number of witnesses only to the points of enquiry;
- (c) Any other person, whose evidence being relevant, the Committee considers it necessary to record.

6.22 The EO may disallow witnesses for any of the following reasons:

1. Irrelevant to the charge sheet
2. Absconding/not available in India/not possible to communicate or for any such reason.
3. Reducing the number of witnesses due to similarity of evidence to be tendered when it is left to the CO to select the persons from the list who should depose. The EO will have to exercise his discretion carefully; he should not be arbitrary in his decision. Unless, however, there are reasonable grounds to indicate prejudice on the part of the EO, his action or merely disallowing some witnesses on grounds of irrelevancy or repetition, cannot be said to violate the principles of natural justice

6.23 Summoning of witnesses:

Under Section 5(1) of the Departmental Inquiries (Enforcement of Attendance of the witnesses and Production of documents) Act, 1972 every Inquiring authority authorised under section 4 shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure in respect of summoning and enforcing the attendance of any witness and examining him on oath, requiring the production of any document or material which is producible as evidence, etc.

Thus he has the power to enforce attendance and it is his duty to take all necessary steps to secure the attendance of both sides. While the accused public servant should be given the fullest facilities by the Inquiring Authority to defend himself and with that end in view, the witnesses which he proposes to examine should ordinarily be summoned by the Inquiring Authority, it is not obligatory for the Inquiring Authority to insist on the presence of all the witnesses cited by the accused public servant and to hold up proceedings until their attendance has been secured. The Inquiring Authority would be within his right to ascertain in advance from the accused public servant what evidence a particular witness is likely to give. If the Inquiring Authority is of the view that such evidence would be entirely irrelevant to the charge against the public servant and failure to secure the attendance of the witnesses would not prejudice defence, he should reject the request for summoning such a witness. In every case of rejection, the Inquiring Authority should record his reason in full for doing so. The inability to secure attendance of a witness will not vitiate the proceedings on the ground that the Public servant was denied the reasonable opportunity.

The Supreme Court in the **State of Bombay vs. Narul Latif Khan**¹¹⁷ have observed that if the accused officer desires to examine witnesses whose evidence appears to the Enquiry Officer to be thoroughly irrelevant, the Enquiry Officer may refuse to examine such witnesses but in doing so, he will have to record his special and sufficient reasons.

¹¹⁷ AIR 1966 SC 269

In many cases warranting initiation of major penalty proceedings, the main impediment is the distinct possibility that private witnesses, who are required to provide crucial evidence, are likely to evade appearance before the Inquiry Authority.

The provisions of above Act of 1972 can be taken recourse to in such cases. This Act is applicable to all inquiry proceedings where lack of integrity is a charge or part of a charge. The inquiry authority authorised under the Act is conferred with the powers of a trial court to summon witnesses/documents and such summons shall be served through a District Judge. The authorization to summon under the Act can be issued only by the Central Govt. Therefore, wherever lack of integrity is a charge and witnesses have to be compelled to attend, a proposal will have to be made to the Central Govt. by the concerned inquiry authority for issue of a notification conferring the power under the Act¹¹⁸.

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

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

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

6.24 Entitlement of TA/DA to the private witnesses and the retired employees appearing before departmental inquiry

The position regarding the payment of TA/DA to private persons or retired employees appearing as defence witnesses has been provided in the Ministry of Finance U.O. Note 3221-E IV(B)/61 dated 20.11.1961 and O.M. No. F.5(15) F.IV (B)/68 dated 15.09.1969 which inter-alia lay down that the private persons or retired employees appearing as prosecution or defence witnesses in departmental inquiries including those conducted by the Commissioner of Departmental Inquiries should be paid TA/DA.^{119,120}

¹¹⁸ CVC letter No 001/DSP/6 Dt. 02.11.2001

¹¹⁹ CVC letter No. 002/MS/15 Dt.10th Feb 2003

¹²⁰ HAL Travelling Allowance Rules (Inland-2013) PC Noc696 dt 22.04.2013, (Para-16 of Annexure-I)

6.25 Grant of immunity to 'approvers' ¹²¹

A procedure for grant of immunity/pardon to the officers/officials from departmental action or punishment has been laid down in respect of cases investigated by the CBI, vide Part VIII of 'Directive' circulated vide this Department's OM No 371/13/87-AVD III dated 19 Sep 1988. However, no such procedure exists in respect of cases investigated by the CVO's agencies.

2. It is felt that an analogous procedure could be utilized to considerable advantage in departmental proceedings and the evidence of the 'Approvers' would lead to considerable headway in investigation of cases. This would also facilitate booking of offences of more serious nature. It has accordingly been decided, in consultation with CVC/CBI and the Department of Legal Affairs, to prescribe the following procedure for grant of immunity/ leniency to an employee in the Departmental inquiries conducted by the CVOs :-

(a) If during an investigation, the CVO finds that an officer, in whose case the advice of the Commission is necessary has made a full and true disclosure implicating himself and other public servants or members of the public and further that such statement is free from malice, the CVO may send to the CVC his recommendation regarding grant of immunity/leniency to such officer from the departmental action or punishment. The CVC will consider the recommendation of the CVO in consultation with the administrative Ministry concerned and advice that authority regarding the course of further action to be taken.

(b) In cases pertaining to the officials against whom the advice of the CVC is not necessary, the recommendation for grant of immunity/leniency may be made to the CVO who will consider and advise the disciplinary authority regarding the course of further action to be taken. If there is a difference of opinion between the CVO and the disciplinary authority, the CVO will refer the matter to the CVC for advice.

3. It will be observed from the procedure prescribed above that the intention is not to grant immunity/leniency in all kinds of cases but only in cases of serious nature and that too on merits as indicated in Para 2 above. It is not open to officer/official involved in a case to request for such immunity/leniency but it is for the disciplinary authority to decide, in consultation with the CVC or the CVO, as the case may be, in which case such an immunity/ leniency may be considered and granted in accordance with the procedure prescribed above in the interest of satisfactory prosecution of the disciplinary case.

6.26 Examination-In-Chief:

Examination of a witness by the party, who calls him, is called as examination-in-chief. The witness here may give his statement by himself or reply to the questions put by the party who has called him. The questions cannot be **leading questions**¹²². The examination-in-chief of a witness is followed by cross-examination, by the opposite party. If after the cross examination, the party who has called the witness desires to clarify points raised in cross-examination, he may put the witness to further examination which is called re-examination. After such re-

¹²¹ DOPT O.M. No 371/6/88-AVD.III dated 22 Mar 90

¹²² Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question or question containing an answer.

examination the witness should be allowed to be further cross-examined if new facts are brought out in the Re-examination. Re-examination should therefore not be on any new point.

(a) The evidence of witnesses is recorded in narrative form or in the form of question and answer method during the examination-in-chief. Alternatively, the witnesses can rely upon the written statements recorded during the preliminary investigation and corroborate such statements.

(b) On completion of examination-in-chief, the prosecution witness will be offered for cross-examination by the charge-sheeted employee/ co- employee.

6.27 Cross-examination:

Cross-examination of a witness is the most efficacious method of discovering the truth and exposing falsehood. The art of cross-examination lies in interrogating witness in a manner which would bring out the concealed truth.

The right of the Public servant to cross-examine a witness who has given evidence against him in a departmental proceeding is, however, a safeguard implicit in the reasonable opportunity to be given to him under Article 311(2).

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

Usually considerable latitude is allowed in cross-examination. It is not limited to matters upon which the witness has already been examined-in-chief, but may extend to the whole case. The Enquiry Officer may not ordinarily interfere with the discretion of the cross-examiner in putting questions to the witness. However, a witness summoned merely to produce a document is not liable to cross-examination. A question about any matter which the witness had no opportunity to know or on which he is not competent to speak may be disallowed. The Enquiry Officer may also disallow question if the cross-examination is of inordinate length or oppressive or if a question is irrelevant. It is the duty of the Enquiry Officer to see that the witness understands the question properly before giving an answer and of protecting him against any unfair treatment

The rule of cross examination is based on the principles of natural justice. The delinquent in a departmental enquiry should be given a reasonable opportunity to defend, which includes not only a right to cross-examine the witnesses for the department but also to cross-examine them effectively.

The cross-examination need not be confined to the testimony of the witness in his examination-in-chief. The questions could cover the entire gambit of defence except, of course, the ones which are totally irrelevant, indecent, or without any base or relevance.

In order to clarify any points, which are missed out in the cross-examination but brought out in the examination-in-chief or any contradictions in the evidence adduced during the examination-in-chief and the cross-examination, the prosecution can re-examine the witness. The charge-sheeted employee will have an opportunity to conduct cross-examination limited to the points

brought out in the re-examination. Cross-examination of a witness has to be completed before other witnesses are produced.

6.28 Examination of a witness by the Enquiry Officer

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

6.29 Self-Examination by Charged Employee:

On completion of the defence evidence, the charge-sheeted employee will have an opportunity to conduct self-examination to defend himself in which case he is liable for cross-examination by the PO. However, he has an option not to subject himself for self-examination in the enquiry but submit written brief. He can opt for any of the above.

On completion of the prosecution evidence, the Presenting Officer will declare that the prosecution evidence has been completed. Thereafter the enquiry officer will advise the charge-sheeted employee to commence the defence evidence by producing defence witnesses and documents. The Presenting Officer will be given an opportunity by the Enquiry Officer to cross-examine the defence witnesses and documents.

6.30 Extent of Control of Enquiry Officer (EO) over Cross-Examination:

- (a) Enquiry Officer must give an opportunity to the delinquent employee to cross-examine the witnesses produced against him as well as to test their testimony.
- (b) The delinquent employee should be specifically asked by the Enquiry Officer to cross-examine the witnesses even though he/she has the right to cross-examine.
- (c) When a delinquent employee does not wish to cross-examine the witness, even though he was asked by the Enquiry Officer to cross-examine him, it should be specifically recorded so in the enquiry proceedings, otherwise, it would appear that employee was not given the opportunity to cross-examine the witness.
- (d) Delinquent employee cannot ask for reservation of cross-examination till all the witnesses are examined. As soon as examination-in-chief is over, cross-examination should be, generally done.
- (e) Furthermore the delinquent Officer cannot insist that defence witnesses should not be examined before the cross-examination of the re-called prosecution witnesses.
- (f) If a question is irrelevant then it can be disallowed. When the questions were relevant and the Enquiry Officer disallowed such questions, then it vitiates the enquiry as the defence is deprived of an opportunity. When the questions are disallowed Enquiry Officer must record the questions and his reasons for disallowing them.
- (g) No doubt, cross-examination is one of the most important processes for elucidation of facts of a case and all reasonable opportunity should be allowed, but Enquiry Officer has always discretion as to how far it may go or how long it may continue.

6.31 When defence evidence should be closed?

After the charge-sheeted employee has produced his defence, it is customary to ask him to close defence evidence by making a formal statement that he has no more evidence or witness to produce. This is very important because the delinquent cannot thereafter say that he wanted to produce his witnesses but it was not permitted.

6.32 Re-Examination of witnesses:

The purpose of re-examination is to clarify the points arising out of cross-examination of the witnesses. The purpose is not to cover the deficiency or to bridge the gap in the evidence; otherwise it vitiates the enquiry.

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

6.33 Recording of evidence

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

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

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

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

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

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

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.

Copies of the depositions will be made available at the close of the inquiry each day to the Presenting Officer as well as to the delinquent officer. Acts to be obtained in this regard.

The oral evidence recorded during the enquiry has to be signed by the witness as well as by Presenting Officer and Co-employee and attested by the Enquiry Officer which is generally done by endorsement "**Read over to the witness and accepted as Correct**" (ROAC). The EO may, at his discretion, allow the PO to present any new evidence or recall or re-examine any witness, provided there is some inherent lacuna in the evidence already recorded. Fresh evidence will not be allowed just to fill up the gaps in the evidence on record. Where such evidence is allowed by the EO, Delinquent employee should also be given an equal opportunity to rebut it, including granting suitable adjournment if necessary. The only stage for production of fresh or new evidence or to recall a witness is when the PO has closed his case and the Defense case is still to commence. Copies of the deposition of the witness are supplied both to Presenting Officer & Delinquent employee and original is kept on the record of enquiry.

Any party to the enquiry or the EO himself may like to bring on record Expert Evidence of the persons especially skilled to form an opinion on those matters. It is essential that the other party be afforded an opportunity to cross-examine the expert witness to clear their doubts. Sometimes, both the parties call experts to prove their respective viewpoints. In such cases, the opinions of the experts are recorded, as stated above, for final evaluation by the EO. It is important to note here that the expert witness produced by one party cannot, however, be cross-examined by the expert witness of other party.

The statement made by each witness shall be succinctly recorded by the Enquiry Officer/ Enquiry Committee and will be signed by the witness and countersigned by the officer charged. It is not necessary to write down question and answers except where absolutely necessary on a crucial point where the admission or denial must be recorded verbatim.

Wherever the Enquiry Officer/Enquiry Committee after having heard and recorded the whole or any part of the evidence in an enquiry ceases to exercise jurisdiction and is succeeded by another Enquiry Officer/ Enquiry Committee, the authority so succeeding him may act on the evidence already recorded by its predecessor or partly recorded by his predecessor and partly recorded by itself. If the succeeding officer/ Committee is of the opinion that further examination of any of the witnesses whose evidence is already recorded is necessary in the interest of justice it may recall and re-examine such witness.

Before close of the prosecution case, the Enquiry Authority may, at its discretion, allow the Presenting Officer to produce evidence not included in the charge-sheet or call for new evidence or recall or re-examine any witness. In such cases, the Charged Employee shall be given opportunity to inspect the documentary evidence if any before it is taken or record or to cross-examine a witness who has been so summoned.

6.34 Relevancy of Documents:

The Enquiry Authority is the sole authority to decide, whether the documents called for by the C.S.E are relevant for the enquiry. If these documents called for are relevant, he will arrange for inspection of such documents through the Presenting officer.

6.35 Privileged Documents:

It may happen that even though the Inquiring Authority has decided for the inspection of the documents by the charged employee, the custodian of the documents may decide that it would be against the public interest. In fact the authority having the custody or possession of the documents in question can claim **privilege**¹²³ in the interest of the company. In such cases EO is bound by the decision of the authority claiming the privilege and such documents need not be produced¹²⁴. Privileged documents include;

- a. Investigation report, preliminary/detailed reports by Police/CBI etc
- b. File of correspondence relating to the case
- c. Any other document/record the production of which, in the opinion of the DA, is considered to be against the interests of the company

In the above situation, the EO should not question the plea/opinion of the authorities concerned having custody or possession and should not summon the documents in respect of which privilege is claimed. In such case, where the custodian of documents refuses access to any official document, he should give a letter to the effect. This letter should be made available for verification by charged employee, and recorded in the proceedings of enquiry.

6.36 Inspection of Documents:

The charged employee should be given all the facilities for inspection of relevant documents. The inspection should be either in his presence or in the presence of an Officer nominated by him. The charged employee is allowed to take down notes or extracts from the relevant documents. However, care should be taken that during the course of the inspection, documents are not tampered with or mutilated, destroyed or stolen. Charged employee will not be allowed to take Xerox copies of the documents. He may be supplied Xerox copies of such documents by the Inquiring Authority at a later date, if he (the Inquiring Authority) so decides.

At the time of inspection of documents, the charged employee is expected to take down all relevant points from the original documents. When the employee was permitted to inspect and allowed to take notes from documents, then the enquiry is not vitiated because the copies of the documents, were not supplied. The reason is that the employee has no absolute right to be supplied with the copies of the documents in these circumstances. It is not necessary to allow the inspection of the same documents again. As a precaution it is desirable to take a letter from the charged employee that he has completed the inspection of documents.

The general practice is that if a document is not disputed by the opposite party or it is proved by the deposition of witness then it is exhibited. This means that a particular number is put on the document. All relevant questions about any document can be permitted.

It is the practice in departmental enquiries that the delinquent employee is required to sign beneath the enquiry proceedings on each day to attest the accuracy of enquiry records. The witnesses are also required to sign after their deposition is recorded.

¹²³ “Privileged” documents are those that a party is not obliged to disclose during the disclosure and inspection process of enquiry proceeding.

¹²⁴ Charma Tiwari vs. Union of India 1988(7) SLR 699-SC. Documents in this category may include file dealing with the disciplinary cases against charged employee, advice of law department, character roll of the employee etc

6.37 Ensuring availability of documents in CBI cases¹²⁵:

It has been observed that non-availability of documents relevant to the departmental inquiry proceedings continues to be a major problem contributing to the delay in the finalisation of the inquiry. The Disciplinary Authority is required to ensure that the P.O. is given custody of all the listed documents in original and certified copies thereof. In respect of the CBI cases, the CBI should make available to the organization, legible certified photocopies of all documents seized by them. It is, therefore, reiterated that CBI/CVO of the concerned organization should ensure that legible certified copies of the documents taken over by CBI are made available to the organization to pursue the departmental proceedings¹²⁶.

Further the CVOs should ensure that charge-sheets are carefully drafted covering all lapses. It is seen that in some CBI cases, there is delay in obtaining the documents. It should be ensured that the listed documents are obtained from the CBI before issuing the charge-sheet and, where parallel proceedings are to be initiated, a set of listed documents, duly certified, is obtained from the CBI¹²⁷.

6.38 Adjourment:

Grant of adjournment is discretionary with the enquiry Officer. It is not a right of the charge-sheeted workers to ask for as many adjournments as he likes but if in refusing adjournment the enquiry Officer failed to give reasonable opportunity to lead evidence then that may in a proper case be considered as an element of infirmity in the proceedings.¹²⁸ The adjournment has to be minimum necessary because justice to be effective has to be quick. It would not be correct for EO to allow the PO or Charged Employee to dominate the proceedings by asking adjournments; what either party deserves is fair and reasonable opportunity to be heard and not an unfair and unreasonable opportunity to obstruct and hinder.

6.39 Part-heard inquiries:

If an Enquiry Officer after having heard and recorded the whole or any part of the evidence in an enquiry ceases to function as Enquiry Officer for any reason, and a new officer is appointed as Enquiry Officer for conducting the inquiry, the new Enquiry Officer in his discretion may proceed with the enquiry de novo, or from the stage left by the predecessor and act on the evidence already recorded by his predecessor or the evidence partly recorded by his predecessor and partly recorded by him, depending upon the stage at which the previous Enquiry Officer ceased to function.

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

¹²⁵ CVC letter No. 006/VGL/5 Dt.18/01/2006

¹²⁶ CVC Order No. 3(v)/99/7 dated the 6th September, 1999

¹²⁷ CVC letter No.06/VGL/065 Dt. 6th July 2006

¹²⁸ Tata Oil Mills Co. v. Workmen, (1964) 2 LLJ 113

6.40 Various facets of enquiry proceedings:

6.40.1 Outside witness:

Where witnesses are not in the employment of the organization which has appointed the Enquiry Officer, then it is not possible for him to compel them to appear before him. In such circumstances both the parties should take steps to produce their respective witnesses. In the absence of the witness who is willing to come, other corroborative evidence may be produced.

6.40.2 Expert Opinions:

The rule followed in judicial Courts is that the expert's opinion as to handwriting is opinion evidence and it can rarely; if ever take the place of substantive evidence.

Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence. If any such expert is to be examined then the employee should be given an opportunity to cross-examine him, otherwise the enquiry will be vitiated. This being so the defence cannot cross-examine a handwriting expert produced by the Presenting Officer by another handwriting expert. However the defence can bring their own handwriting expert as a witness.

6.40.3 Administering oath

The Civil and Criminal Courts have got power to administer oath in view of the Indian Oaths Act. The said Act empowers all Courts and persons having by law or consent of parties authority to receive evidence. The Enquiry Officer does not fall into any of the above classes and therefore the Enquiry Officer is not empowered to administer oath.

6.40.4 Hostile Witnesses:

A party calls a witness with the hope that the witness would depose the facts, which will favour the party concerned but sometimes the witness states something which is contrary to the earlier version of the witness. Such a witness is called hostile witness. The Evidence Act does not say anything about declaring a witness hostile but simply provides that a witness may be permitted to be cross-examined by the party who calls him in certain circumstances. A hostile witness can be cross-examined.

6.40.5 Action against public servants, serving as witnesses, but turning hostile in trap and other cases of CBI;

CBI often requisitions the services of Public servants from various organisations in order to utilize them as witnesses in cases of search, trap, etc. The underlying objective behind such practice is to have reliable independent witnesses, who withstand the scrutiny during court trials.

However, in large number of cases, Public servants, who are engaged as such witnesses, are found resiling their original statements during trials, on pleas that they had signed the memoranda without reading the contents or they had not witnessed the real proceedings.

It is obvious that these public servants, whose services are thus utilized by the CBI, are turning hostile for ulterior reasons. It is surely not expected that educated and responsible public

servants should resort to such devious behaviour, which undermines CBI cases and goes against public interest.

Rule 16, Chapter XIII of Vigilance Manual Vol. I, provides that if a Public 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 grave¹²⁹.

6.40.6 Admissibility of Evidence:

Assessment of the deposition of witnesses and documents and to come to the conclusion as to whether the charges are proved or not is called appreciation of evidence.

The Rule that unless the maker of a document is available for cross-examination, the document should not be admitted into evidence is a rule from the Evidence Act and it has no application to domestic enquiries. It would be stretching the principles of natural justice to a breaking limit if it were to be held that evidence, though credible is inadmissible, because the maker of the document has not appeared at the inquiry.¹³⁰

Evidence may be relevant but it may not be admissible according to the provisions of the Evidence Act. Before civil and criminal courts, evidence must be both admissible as well as relevant.

There is no such clear distinction in the evidence before enquiry Officer and it can be said that except in exceptional cases evidence which is relevant is always admissible. The technical rules of the Indian Evidence Act are not applicable to departmental enquiries.

6.40.7 When hearsay evidence is not admissible:

There is no bar against receiving hearsay evidence provided it has reasonable nexus and credibility. All material which are logically probative for a prudent mind are permissible¹³¹.

According to **Section 60 of the Evidence Act** "Oral evidence must, in all cases whatever, be direct" Hearsay evidence means all statements or declarations of persons not called as witnesses but repeated by third persons. Though the word 'hearsay' has not been used in the Evidence Act but such evidence is commonly known as 'hearsay evidence. The principle of this rule is also applicable to departmental enquiries. Some departmental rules expressly provide for exclusion of hearsay evidence and in that case if some documents containing information of hearsay nature are considered then the enquiry can be set aside for that reason. The principles laid down by the Supreme Court are well established that hearsay evidence is ordinarily no evidence. The exclusion of hearsay in substantially controversial question is not a mere technical rule; it is only an extension of the principle that no man will be condemned behind his back.

¹²⁹ CVC letter No. 000/VGL/154 Dt. 15th December 2005

¹³⁰ Zonal Manager, LIC of India and others Vs. Mohanlal Saraf, 1978(2) SLR 861 (J&K).

¹³¹ State of Haryana vs Rattan Singh, 1977(1) SLR 750

6.40.8 When the earlier statements of witnesses can be used as evidence:

- (a) Previous statements are not substantive evidence:

In a number of cases the statements of witnesses are recorded at a stage prior to the formal departmental enquiry. They may be recorded during preliminary enquiry or enquiry by police or in other circumstances. If the employer or the department wants to rely on the evidence of such witnesses then the witnesses should again be produced during formal departmental enquiry and they must depose as to the facts which are mentioned in their previous statements. Such statements cannot be relied upon unless the witnesses making previous statements are again produced.

- (b) Statements during preliminary enquiry are also not substantive evidence:

The statements made during preliminary enquiry are not part of the record of formal enquiry and, therefore, the statements cannot be relied upon unless the makers of the statements are again produced in final enquiry.

- (c) Earlier statements can be used to contradict witnesses:

As observed by their Lordships of the Privy Council in **Brijbhushan Singh v. Emperor**,¹³² a statement made before the police cannot be used as a substantive piece of evidence. It can be used to cross-examine the person who made it and the result may be to show that the evidence of the witness is false but that does not establish that what is stated out of court is true. The earlier statements can only be used for the purpose of cross-examination and not for any other purpose.

6.40.9 Proof of hand-writing is necessary in case of disputed documents:

If a particular document produced either by the employer or by the Charge-sheeted employee is disputed by the other then the signatures on the document or the handwriting in which the document is written has to be proved.

The proof of handwriting is necessary because even though writing may be similar but in judicial proceedings findings cannot be based upon conjectures or strong suspicion. In departmental enquiry, it is necessary to prove the documents as in a judicial trial. It should be kept in mind that the test for disputed handwriting is not the extent of similarity but the nature and extent of dissimilarities noticed.

6.40.10 Direct evidence and circumstantial evidence:

Direct evidence is the evidence of eyewitnesses and the Enquiry Officer is required to decide whether evidence is believable or not. Circumstantial evidence means the evidence of connected circumstances which make probable that a particular incident would have happened. In the absence of direct evidence, Enquiry Officer is required to decide the case on the basis of circumstantial evidence. There is no rule of evidence that if direct evidence on a fact is rejected, then the circumstantial evidence upon that fact must be rejected. A fact has to be determined on the basis of such direct and circumstantial evidence as may be on record.

¹³² AIR 1946 PC 38

6.40.11 When the charge can be said to be established by circumstantial evidence:

In case of direct evidence there is no much scope of the enquiry officer acting merely on suspicion or surmises though there may be scope for deciding whether the evidence is trustworthy or not. But in the case of circumstantial evidence there is much scope of coming to a decision that a delinquent employee is guilty even though circumstances are not sufficient to give rise to a reasonable inference that the delinquent is guilty and therefore, it is very essential to understand the mode of evaluating the circumstantial evidence. The mode of evaluating the circumstantial evidence is that the circumstances, from which the conclusion of guilt is to be drawn, should be consistent only with the hypothesis of guilt of the accused. The circumstances should be in-commutable with the innocence of the accused and incapable of the explanation on any other reasonable hypotheses. In evaluating the circumstantial evidence the various circumstances should not be viewed in isolation but an overall view is to be taken. If the Enquiry Officer finds a person guilty based on of circumstantial evidence, then the circumstances should irresistibly lead to an inference of guilt and if the inference of guilt drawn from a circumstantial evidence is not the only irresistible inference, then the report is liable to be quashed. No one can be punished on the basis of suspicion alone. Guidelines for evaluating evidence are placed at **Appendix 'J'**.

6.40.12 Evidence is to be weighted and not counted:

A fact is not to be held as acceptable simply because it has been stated by more witnesses. A case may be decided on the basis of the statement of a single witness provided he is reliable.

6.40.13 Status of the witness is immaterial for assessing credibility:

The acceptability or otherwise of a witness does not depend upon the official status of the witness because truth has no connection with status.

6.41 Brief by PO/Delinquent employee:

In the normal course, the charge-sheeted employee as well as the Presenting Officer is free to submit their written statement of arguments if they so desire.

The word 'Written Brief' is used in the departmental enquiries against Officer Employee. This is the nut shell summing up of case of each party, i.e. management and defence. It includes the information to be discerned from the evidence adduced during the enquiry. In workman's case we use the word 'arguments'-which denotes putting up in the case of each party to the Enquiry Officer to draw inference from evidence adduced during the enquiry. The Written Briefs need not be exchanged between the parties. The arguments are exchanged between the parties, if they are in writing.

After the completion of the production of evidence on both sides, the Enquiry Officer may hear the Presenting Officer and the Public servant or permit them to file written briefs of their respective case, if they so desire. It will be observed from the phraseology of Rule 14(19) of the CCA Rules, 1965 that the Inquiring Authority has to hear arguments that may be advanced by the parties after their evidence has been closed. But, he can, on his own or on the desire of the parties, take written briefs. In case he exercises the discretion of taking written briefs, it will be but fair that he should first take the brief from the Presenting Officer, supply a copy of the same to the Public servant and then take the brief in reply from the Public servant. In case the copy of

the brief of the Presenting Officer is not given to the Public servant, it will be tantamount to hear arguments of the Presenting Officer at the back of the Public servant.¹³³

6.41.1 Materials which a written brief of the PO should contain

1. The reference of his appointment as P.O. and brief of the charges on which inquiry was held. This should be in the introductory paragraph.
2. Brief of the Inquiry Proceedings i.e., number of witnesses examined including number of documents exhibited and whether the Inquiry was conducted *ex parte* .
3. The relevancy of oral and documentary evidence produced during the inquiry. This should be done for each article of charge separately.
4. If he has been able to get the line of the defence adopted by the delinquent, the same should also be discussed as also the materials to refute the defence.
5. To summarize the evidence produced during the enquiry and his opinion as to whether the allegation is proved.

6.42 Preparation and submission of Report by Enquiry Officer:

On conclusion, the Enquiry Officer will declare the enquiry proceedings having been completed. Thereafter, the Enquiry Officer will prepare the enquiry report and forward the same to the Disciplinary Authority. Where there is more than one charge which were leveled against the delinquent employee, the Enquiry Officer should give his findings in respect of each charge and the findings should not be in parts but consolidated.

6.43 Report of the Enquiry Officer:

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

The EO's first duty is to study and understand the department's case and the defence version thoroughly. He must endeavour to reconstruct the conduct expected of charged employee. He must ascertain all the details of the event or transaction and relevant circumstances attending on them. He must probe into what has happened, where and when. He must know who has done what and what he ought to have done. He should ascertain, what was the role assigned to charged employee specifically in relation to the charge; what was expected of him and what he did or omitted to do. He should conclude whether and which of the imputations/ charges are proved.

¹³³ Collector of Customs vs. Mohgd. Habibul SLR 1973 (i) Calcutta 321. It is laid down therein that the requirement of Rule 14(19) of the CCA Rules, 1965 and the principles of natural justice demand that the delinquent officer should be served with a copy of the written brief filed by the Presenting Officer before he is called upon to file his written brief. Though the decision of any High Court is binding on the courts and authorities in the state under the jurisdiction of that High Court, nonetheless, it has its persuading effect on other courts too.

He should then judge whether charged employee within his knowledge and experience behaved with due care and attention, reasonably and honestly; whether he violated the law, rules and procedures, he was expected to follow; whether he knew or ought to have known the propriety and results of his acts. In other words, whether he behaved as a prudent man would have been expected to do. He cannot say that he violated the procedure in the interest of Government. Rules and procedures are laid down in the interest of the public and public servants are expected to follow them.

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

The Inquiring Authority should take particular care while giving its finding on the charges to see that no part of the evidence which the accused Public servant was not given an opportunity to refute, examine or rebut has been relied on against him. No material from personal knowledge of the Inquiring Authority having a bearing on the facts of the case which has not appeared either in the articles of charge or the statement of allegations or in the evidence adduced at the inquiry and against which the accused Public servant has had no opportunity to defend himself should be imported into the case. The language should be sober, becoming and dignified

The report of the Enquiry Officer must be judicious, show poise and balance. It should contain:

- i. an introductory paragraph in which reference will be made about the appointment of the Enquiry Officer and the dates on which and the places where the inquiry was held;
- ii. charges that were framed;
- iii. charges which were admitted or dropped or not pressed, if any;
- iv. charges that were actually enquired into;
- v. brief statement of facts and documents which have been admitted;
- vi. brief statement of the case of the disciplinary authority in respect of the charges enquired into;
- vii. brief statement of the defence;
- viii. points for determination;
- ix. assessment of the evidence in respect of each point set out for determination and finding thereon;
- x. finding on each article of charge;
- xi. a folder containing :-
 - a) list of exhibits produced in proof of the articles of charge;
 - b) list of exhibits produced by the delinquent officer in his defence;
 - c) list of witnesses examined in proof of the charges;
 - d) list of defence witnesses;
 - e) a folder containing depositions of witnesses arranged in the order in which they were examined;
 - f) a folder containing daily order sheet;

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

The findings and conclusion arrived at by the enquiry committee should be purely based on the oral and documentary evidence relied upon during the enquiry. Under no circumstances, extenuating factors, which are outside the purview of the enquiry of the charges, will be relied upon. Further, the Enquiry Officer should not give any findings based upon his own personal knowledge of the charge-sheeted employee or his own assumptions. The enquiry report should categorically state whether the charges are proved or not. However, the enquiry report should not contain any recommendation or proposal relating to imposition of any specific punishment.

If in the opinion of the EO, proceedings of the inquiry 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 Public 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.

The 'malafides' should be used with great caution. It has to be judged from the circumstances of each transaction or event, powers and responsibilities vested in each officer and ultimately what a prudent and rational person would do in these circumstances with those powers and responsibilities.

The Enquiry Officer after signing the report becomes *functus officio*¹³⁴ and cannot thereafter make any modification in the report.

6.44 Ex-parte Enquiry:

When the enquiry at a particular time, place and date is fixed and the charge sheeted employee does not turn up and seeks a postponement on genuine grounds, the same may be granted. If the charge-sheeted employee makes further attempts for adjournment and the Enquiry Officer is convinced that it is being done with a view to deliberately delay the proceedings, the Enquiry Officer may proceed with the enquiry ex-parte. Every adjourned proceedings of the ex-parte enquiry should be duly notified to the charge-sheeted employee. If he presents himself and desires to participate he should be allowed to do so. In no case, the Enquiry Officer should proceed ex-parte on the first date of enquiry. One ex-parte hearing does not preclude giving notice of subsequent hearings to the Delinquent employee. Where an ex-parte enquiry is held, it should not be presumed that the misconduct as mentioned in the charge sheet, stands proved. The Enquiry Officer should still hold the enquiry and the Presenting officer prove the charge against the charge-sheeted employee and adduce evidence to that effect. If the Presenting Officer fails to prove the charge, the Enquiry Officer should give his findings, accordingly holding the delinquent employee not guilty.

6.45 Situations in which ex-parte proceedings can be conducted:

- a. When Officer/employee Charged absents and does not attend the enquiry proceedings, despite being given reasonable opportunity to appear in the enquiry.

¹³⁴ Latin: an officer or agency whose mandate has expired either because of the arrival of an expiry date or because an agency has accomplished the purpose for which it was created

- b. When Officer/employee Charged is seeking unnecessary adjournments on frivolous grounds simply to delay the enquiry proceedings and walks out of the enquiry.
- c. When Charged Officer/ employee fails to intimate to enquiry officer, reasons of his absence or gives in writing that he does not wish to participate in the enquiry proceedings.
- d. When Charged Officer/ employee is present, but is creating hurdles in smooth conduct of the enquiry by his behavior.

6.46 Requirements for ex-parte proceedings:

The following are few instances, which are required to be complied with for conduct of ex-parte proceedings:

1. Enquiry Officer should pass specific orders on record of the enquiry proceedings, clearly indicating the circumstances under which ex-parte proceedings are to be conducted. He should simultaneously record that it would be open to Charged Officer/employee to join the proceedings, if he so desires at any stage of enquiry subsequently.
2. In case the Charged Officer/employee wished to join the enquiry proceedings subsequently, he may be permitted to do so after recording his request and passing appropriate orders in the matter on record by setting aside ex-parte proceedings.
3. There is no bar to restart ex-parte proceedings, even after the charged officer/employee is allowed to join provided he creates circumstances as described above, but only specific order has to be passed for resumption of ex-parte proceedings.
4. The purpose of ex-parte proceedings is not to deprive the Charged Officer/employee in bringing his Defence on record, but to ensure that enquiry proceedings are conducted in time bound period and to stop the unnecessary attempt on the part of either party i.e. prosecution or Defence to delay the same.
5. Before conducting ex- parte proceedings, it should be specifically ensured that notice of enquiry has been duly served on the Charged Officer / employee.
6. It is desirable that once ex-parte proceedings are started, enquiry proceedings be held on day-to day basis.
7. In case any material facts or documents are submitted through post by Charged Officer/ employee, the same should be taken on record of enquiry treating them as submission of the Defence.
8. In case witness has been examined by the prosecution, it is obligatory on the part of Enquiry Officer to seek clarifications by way of asking questions from the witness (not cross examining)” in order to protect the interest of Charged Officer/ employee in ex-parte enquiry.
9. It should be ensured that day to day basis of enquiry, along with other evidences as taken on record, are sent to Charged Officer/ employee simultaneously and Charged Officer/ employee be advised that he is free to join the proceedings at any stage at any time in future.
10. In case request is received from Charged Officer/ employee to allow cross examination of witnesses, who have already deposed, the same can be examined on merits and facts and circumstances of each case and if there is not much difficulty in getting the witness cross examined, the right to cross examine be granted to the Charged Officer/ employee.
11. The Enquiry Officer has to ensure meticulous compliance of all the statutory requirements and entire procedure of enquiry what would have been carried out in the presence of Charged Officer/employee, has to be done even in his absence. No short cut methods be resorted to due to absence of Charged Officer/ employee.

6.47 Situations in which ex-parte proceedings have been held to be not justified by various Courts:

1. If message of absence has been received by telegram/letter seeking adjournment and reasons for absence were justified. Ex-parte proceedings are not justified¹³⁵.
2. If workmen wants adjournment for 2-3 days to enable to contact his representatives to represent him and to bring the witnesses in his Defence. The request is rejected on the ground that in notice of enquiry, he was specifically asked to be ready with the same. Ex-parte enquiry is not justified.¹³⁶
3. If an employee cannot attend the enquiry at out station due to non- payment of subsistence allowance then ex-parte enquiry is not justified.¹³⁷

6.48 Situations in which ex-parte proceedings have been held to be justified by Courts:

In the course of statement, the workmen wanted the management to produce a file. The Enquiry Officer directed the management to produce the file on the next date of hearing. The workmen insisted that it should be produced immediately and when it was not produced, he left the enquiry under protest, and then ex-parte proceedings were justified¹³⁸.

When workmen does not attend enquiry on a particular date fixed for enquiry without giving specific reasons, it is not necessary for Enquiry Officer to issue fresh notice and ex-parte enquiry in such a situation is held to be justified¹³⁹.

If the conduct of an employee is deliberate in not appearing and explaining charges against him with an eye to future legal remedy, such a situation goes against him and he cannot complain in future that he was not given reasonable opportunity to defend himself on account of ex-parte proceedings¹⁴⁰.

6.49 Common Proceedings:

Where two or more employees are involved in a case, disciplinary action may be taken against all of them in a common proceeding. Where such charge sheets relate to the same transaction or occurrence and the nature of the evidence is common, the holding of common proceedings is lawful and valid. In other words, the holding of common proceedings is, per se, not invalid unless prejudice could be shown to have been caused to any Charged Employee on account of the joint trial. This should be based on the specific orders of the Disciplinary Authority.

Such an order should specify:

- i. the authority which may function as the disciplinary authority for the purpose of such common proceedings;
- ii. the penalties which such disciplinary authority will be competent to impose;
- iii. Whether the proceedings shall be initiated as for a major penalty or for a minor penalty.

¹³⁵ G. Krishna vs Hindustan Aeronautics Ltd. 44 FJR 349 (Mys)HC

¹³⁶ Delhi Cloth & General Mills Co Ltd. vs Thejvir Singh AIR 1972 SC 2128.

¹³⁷ Ghanshyam Das Srivastava vs State of M.P. AIR 1973 SC 1183

¹³⁸ Management of Ganges Printing Ink Factory vs Styapal Delhi Gaz dated 1.2.1973

¹³⁹ Management of Gautam Motors Ltd vs Kamal Nain (Del. RGaz Part VII dated 26.04. 73)

¹⁴⁰ Crompton Greaves Ltd. vs SW Shinde 1973 ICR 401 BOM HC

6.50 Authority who can order Common Proceedings:

The authority competent to order the holding of common proceedings is the authority that has the power to impose the penalty of dismissal from service on the employees involved. In case the authorities competent to impose the penalty of dismissal from service on such employees are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities, with the consent of the others. Such consent is necessary even where one such authority is administratively subordinate to the other.

6.51 Procedural formalities in Common Proceedings:

Where it is decided to hold Common Proceedings, the competent authority shall make an order, which shall specify:

- (i) The authority, which shall function as the Disciplinary Authority for the purpose of such Common Proceedings.
- (ii) The Penalties specified in the service rules which such an authority shall be competent to impose; and
- (iii) Whether the procedure prescribed in the rules for minor penalty action or for major penalty action shall be followed.

6.52 Drafting of Charge Sheet in Common Proceedings in certain cases:

Normally, in cases where Common Proceedings are considered necessary, the transaction or occurrence being the same, statement of imputation of misconduct or misbehaviour, and list of witnesses and documents in support of the charges, shall be common. As regards the Articles of Charge, earlier the role of each individual employee in the misconduct committed jointly was brought out separately but now it is not necessary in view of the judgment of the of the Supreme Court in the **Union of India v. Tulsiram Patel**¹⁴¹, case in which it was held that in cases of concerted and pre-planned action, it is not possible to particularize acts of each individual member who participated in the commission of those acts.

It may also happen that two or more Public servants governed by different disciplinary rules may be concerned in a case. In such cases proceedings will have to be instituted separately in accordance with the rules applicable to each of the Public servant concerned.

6.53 De-Novo Enquiry:

De nova enquiry is an enquiry done afresh. When a court feels that an enquiry is not done in a complete or correct manner, court can insist on enquiry into the matter in issue from the beginning. When the prior enquiry is found deficient de novo enquiry is ordered. This occurs in administrative agencies enquiries also.

If an Enquiry Officer after having heard and recorded the whole or any part of the evidence in an enquiry ceases to function as Enquiry Officer for any reason, and a new officer is appointed as Enquiry Officer for conducting the inquiry, the new Enquiry Officer in his discretion may proceed with the enquiry de novo.

¹⁴¹ AIR 1985, SC 141

If the charge-sheeted employee makes a request for re-conducting the enquiry or/in case the Disciplinary Authority considers it necessary for other valid reasons and the Disciplinary Authority feels on the merits of the case that the enquiry has to be conducted again in the interest of justice, the enquiry may be so conducted again based on the orders of the Disciplinary Authority. This is called De-Novo Enquiry.

Disciplinary Authority to satisfy that the inquiry has been held properly and to remit the case for fresh or further inquiry, if necessary: The Disciplinary Authority has to satisfy itself that the report of Inquiry Officer is complete in all respects and does not suffer from any infirmity, irregularity or insufficiency of evidence. The limitation on the Disciplinary Authority to refer a case for re-inquiry only where the earlier inquiry has not been proper or regular, flows not only from the statutory rules [see Rule 15(1) of the C.C.S (C.C.A) Rules, 1965] but also from the Case-law [K.R.Deb v. Collector of Central Excise, AIR 1971 SC 1447; Dwarka Chand v State, AIR 1958 Raj.38].

Denovo inquiry cannot be ordered where the irregularity crept in at a later stage only: Where, on pointing out of irregularities in the holding of inquiry, the Disciplinary Authority had ordered a fresh inquiry, the Supreme Court held that since the flaw relates to recording of defence evidence, it was not necessary to hold inquiry from very beginning. The new inquiry officer should proceed to give opportunity to the petitioner to produce his documentary and oral evidence and also consider the question of recalling any witness for further cross-examination by the petitioner and then proceed to decide the matter afresh (State Bank of Bikaner & Jaipur v. Ajay Kumar Gulati, 1996 AIR SCW 3005).

Right of the charged employee to ask for re-inquiry: If a public servant has been through a departmental inquiry, duly carried out, he cannot ask for a repetition of that stage. Such a right to the charged officer has expressly been denied by Art. 311(2), as amended. The same position was maintained in Judicial pronouncements even before Art. 311(2) was amended [High Commissioner v. I.M. Lall, AIR 1948 PC 121; Khem Chand v. Union of India, AIR 1958 SC 300; U.R.Bhatt v. Union of India, AIR 1962 SC 1344].

Right of the Employer to order re-inquiry: The principle is that when a public servant is exonerated after due investigation of facts, he should not be charged again with the same facts [S.A.Venkataraman v. Union of Inida, AIR 1954 SC375]. The authority who took the original decision or his successor in office has no power to re-open the case [R.T. Rangachari v. Secretary of State, AIR 1937 PC 27].

6.54 Caution against dilatory tactics in common proceedings:

An interesting type of dilatory tactic has been noticed in common proceedings. One of the accused employees makes a representation alleging bias on the enquiry officer; the moment it is disposed of, the enquiry is about to resume, another employee submits a similar presentation and so on. To frustrate such tactics, it is advisable that if a representation alleging bias against the enquiry officer is received from one of the Charged Employees, before it is considered, such representations, if any, from other co-accused should also be invited.

6.55 Cases where CVC/ CBI to be Consulted:

6.55.1 Consultations with Vigilance Commission for advice:

In **Vineet Narian v. Union of India**¹⁴², the Supreme Court directed that the Central Vigilance Commission be given a statutory status. Subsequently CVC Act 2003 was enacted and enforced.

The Central Vigilance Commission is empowered to exercise superintendence over the vigilance administration of the various Ministries of the Central Government or Corporations established under any Central Act, Government Companies, Societies and local authorities owned or controlled by that Government in terms of the Ministry of Personnel, Public Grievances & Pensions, DOPT Notification dated 12th September 2007¹⁴³.

Para 22 of Chapter X of Vigilance Manual provides that all cases pertaining to Gazetted Officers (may be read as Group A Officers passing of CVC Act-2003), in respect of whom the Central Vigilance Commission is required to be consulted, will be referred to the Commission for advice (first/second stage advice). The major penalty cases pertaining to such officers envisage consultation with the Commission at two stages. The first stage of consultation arises while initiating disciplinary proceedings, while second stage of consultation is required before a final decision is taken at the conclusion of the proceedings. It follows that the CVC should also be consulted in cases where the disciplinary authority have initiated action for major/minor penalty proceedings and propose to close the case on receipt of Statement of defence¹⁴⁴.

The Commission is to be consulted only in those cases which, prima-facie, have, or are likely to have, a Vigilance angle¹⁴⁵ and an element of corruption, criminal misconduct or malafides.

In respect of composite cases wherein the Commission had tendered its first stage advice for all categories of officers involved, second stage advice of the commission should be sought only in case of officers falling within the jurisdiction of the commission. With respect to officers not falling under the jurisdiction of the commission, the case should be dealt at the level of CVO, and referred to the commission for second stage advice only if the DA's opinion is at variance with the commission's advice. This procedure would also apply to CBI investigated cases involving officials not falling under the jurisdiction of the CVC wherein the commission had rendered its advice (cases where there were differences between the CBI and the DA and which were referred to the CVC for advice)¹⁴⁶.

6.55.2.1 Jurisdiction of CVC.

Jurisdiction of CVC over employees of PSU's, Insurance Companies etc has been notified by DOPT vide Gazette Notification dated 12/09/2007. As per the notification, in case of Schedule 'A' & 'B' Public Sector undertakings Chief Executive and Executives on the Board and other Officers of E-8 and above come under CVC's jurisdiction. In case of Schedule 'C' & 'D' Public Sector Undertakings, Chief Executive and Executives on the Board and other Officers of E-7 and above come under CVC's jurisdiction. Accordingly cases pertaining to these officers need to be referred to Commission for its advice¹⁴⁷.

¹⁴² AIR 1998 SC 889, para 59

¹⁴³ CVC Circular No. 000/VGL/11 Dt. 18/10/2007

¹⁴⁴ CVC Circular No. 002/VGL/61 Dt. 16/03/2005

¹⁴⁵ Vigilance Angle has been defined vide CVC office order No. 74/12/05 Dt. 21/12/2005

¹⁴⁶ CVC letter No.03/01/10 Dt. 28/01/2010

¹⁴⁷ CVC letter No. 37/10/07 Dt. 18/10/2007

6.55.2.2 Obtaining Commission's advice in composite cases

Para 16.2 of Special Chapter on Vigilance Management in Public Sector Enterprises provides that if an employee of a PSU involved in a case, falls within the Commission's jurisdiction, latter's advice would be required and any decision of the disciplinary authority at this juncture may be treated as tentative. Such a reference would be required to be made even in respect of an officer/staff who are not within the Commission's jurisdiction if they are involved along with other officers who are within the jurisdiction of the Commission, as the case would then become a composite case and falls within the Commission's jurisdiction¹⁴⁸.

6.55.3 Reference to the Commission for first stage advice

As a matter of fact, the Central Vigilance Commission tenders advice at two stages, If upon preliminary investigation, it is found that prima facie there is some substance in the allegations, the CVC is to be consulted as to the future course of action to be taken. The Disciplinary Authority on considering the investigation report decides on the basis of the facts disclosed in the preliminary enquiry, whether the complaint should be dropped or warning/caution administrated or regular departmental proceedings launched for minor or major penalty as the case may be. The decision of DA at this juncture is considered to be 'Tentative' and complete records of the case along with 'Tentative Decision' of the DA is required to be referred to CVC for officials within its jurisdiction. The Commission will examine the matter and tender its 'first stage advice' which is considered by the DA before proceeding further¹⁴⁹.

6.55.4 Reference to the Commission for second stage advice

At the second stage, the advice of CVC is again to be sought before finalization of disciplinary proceedings after a copy of the Inquiry Report has been made available to the charged officer(s) and their representation/submissions have been obtained. On conclusion of the Enquiry proceedings and before passing any final order, the DA is required to consult CVC for its "Second Stage Advice" along with complete case records. CVC will examine the case records, including the Enquiry Report and tender its 'Second Stage Advice' which is required to be considered by the DA before passing final orders.

6.55.5 Other references

In case of a complaint referred by the Commission to the CVO for investigation and report, if after investigation it is found that the officials involved in the case do not fall under the jurisdiction of the CVC, the case need not be referred to the Commission and may be dealt with by the CVO. However, action taken by the CVO on the CVC referred complaint needs to be intimated to the commission for investigation compliance. However, this dispensation does not apply to complaints received by the commission under PIDPI Resolution and which are referred to the CVO for investigation and report (CVC letter No.03/01/10 Dt. 28/01/2010).

6.55.6 Documents required for first stage advice

- (i) All vigilance reports of the CVOs should conform to the parameters prescribed in Annexure-A (at **Appendix 'K'** of the Manual)

¹⁴⁸ CVC letter No. 000/VGL/187 Dt. 08.02.2004

¹⁴⁹ CVC letter No. 006/PRC/1 Dt. 06/08/2009

- (ii) They would be accompanied by an Assurance Memo, in the form of Annexure-B (at **Appendix 'L'** of the Manual)
- (iii) Bio-data of suspect officials, figuring in the investigation reports, should be enclosed as per the format provided at Annexure-C (at **Appendix 'M'** of the Manual)
- (iv) Tabular statements, as prescribed vide the Commission's circular dated 1.12.2008, shall continue and be kept objective and precise. (at **Appendix 'N'** of the Manual)
- (v) Draft charge-sheets and imputation of charge in respect of suspect officials where disciplinary action, such as major penalty or minor penalty proceedings, is proposed, would accompany the investigation reports¹⁵⁰.

6.55.7 Other Documents required for second stage advice:

- (i) A copy of the charge sheet issued to the public servant;
- (ii) A copy of the inquiry report submitted by the inquiry authority {along with a spare copy for the Commission's records};
- (iii) The entire case records of the inquiry, viz copies of the depositions, daily order sheets, exhibits, written briefs of the Presenting Officer and the Charged Officer;
- (iv) Comments of the CVO and the disciplinary authority on the assessment of evidence done by the inquiring authority and also on further course of action to be taken on the inquiry report.

6.55.8 Reconsideration of CVC advice:

Para 5.16, Chapter 1 of the Vigilance Manual Volume I – Fifth Edition provides for consultation with the Commission if the administrative authorities do not agree with the Commission's advice and propose to take either "lenient view" or a "stricter view" than recommended by it. Such references however may be made only once and that too with the prior approval of the authorities¹⁵¹. Similar provisions also exist in para 19 of the Special Chapter on Vigilance Management in Public Sector Enterprises. As a rule, the Commission entertains only one request for reconsideration. Compliance of CVC's first stage advice and second stage advice may be ensured within periods of one month and two months respectively.

The Commission's advice is based on the inputs received from the organization and where the Commission has taken a view different from the one proposed by the organization, it is on account of the Commission's perception of the seriousness of the lapses or otherwise. In such cases, there is no scope for reconsideration. The Commission has, therefore, decided that no proposal for reconsideration of the Commission's advice would be entertained unless new additional facts have come to light which would have the effect of altering the seriousness of the allegations/charges leveled against an officer. Such new facts should be substantiated by adequate evidence and should also be explained as to why the evidence was not considered earlier, while approaching the Commission for its advice. The proposals for reconsideration of the advices, if warranted, should be submitted at the earliest but within two months of receipt of the Commission's advice. The proposals should be submitted by the disciplinary authority or it should clearly indicate that the proposal has the approval of the disciplinary authority¹⁵².

¹⁵⁰ CVC Circular No 006/PRC/1 Dt 6/8/2009

¹⁵¹ As indicated in para 5.13(b), Chapter I *ibid*.

¹⁵² CVC letter No. 008/VGL/027 Dt. 24th April 2008

6.55.9 Cases in which it is proposed not to accept the CVC's recommendation - procedure to be followed regarding^{153, 154}

The undersigned is directed to say that it is observed from the cases of non-acceptance of the CVC's advice mentioned in the CVC's Annual Reports that many of these cases were not referred to the CVC for reconsideration of its advice before deciding not to accept the same. It may be mentioned in this connection that, whenever it is proposed to disagree with the advice of the CVC, an opportunity should be given to the CVC to reconsider its advice. Attention is invited in this connection to Secretary (Personnel)'s D.O letter No 134/2/83-AVD.I dated 02 May 1985 in which it has been provided that, in cases of disagreement with the advice of the CVC the matter should be referred to the CVC for reconsideration of its advice and once and only once.

2. It is requested that the Ministry of Agriculture etc may kindly ensure that cases in which it is proposed to disagree with the advice of CVC are referred to the CVC for reconsideration of its advice once only. They may also issue suitable instructions in this regard to the organizations and the attached and subordinate offices under administrative control.

6.55.10 Difference of opinion with CVC's advice regarding quantum of penalty, etc.¹⁵⁵

The Commission has observed that in a number of cases of disagreement with the Commission's advice, the Commission has not been informed about the reasons for disagreement or whether a reference to the DOPT, as required under the instructions, was made. The CVOs are, therefore, directed to ensure that before it is finally decided to disagree with the Commission's advice on further action on a complaint or on an investigation report, or in a Vigilance case, reference is made to the Department of Personnel in respect of all such cases, where the appointing authority is the President or the disagreement is due to UPSC's advice.

2. The CVOs should also ensure that wherever it has been finally decided to disagree with the Commission's advice, reasons for the same are communicated to the Commission along with a final order in the case, to enable the Commission to decide about inclusion of the case in its Annual Report.

6.55.11 Supply of copy of advice of CVC to Charged Employee:

The law of the land requires that though the first stage consultation could be confidential, the *recommendation* of the CVC on the report of enquiry has to be supplied to the Charged Employee, before a final decision is taken.

The CVC has since decided that a copy of their first stage advice be given to the employee along with the charge sheet. A copy of their second stage advice has to be supplied to the employee along with the copy of report of enquiry forwarded to him for his submissions/observations, *vide* their instruction No. 99/VGL/66 dated 28/9/2000. The relevant extract is given below:

¹⁵³ DOPT O.M. No 118/1/85-AVD-I dated 11 Dec 1985

¹⁵⁴ Para 19 of "Special Chapter on Vigilance Management in PSE"

¹⁵⁵ CVC letter No. 006/VGL/098 Dt. 10th October 2006

(a) The Commission has reviewed the above instructions in view of its policy that there should be transparency in all matters, as far as possible. The Commission has observed that the Hon'ble Supreme Court had held a view in the case that non-supply of CVC's instructions, which was prepared in the absence of respondent without his participation, and one does not know on what material, which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just enquiry¹⁵⁶. Further, the Hon'ble High Court of Karnataka, in writ Petition No. 6558/93, has also observed that if a copy of the report (CVC's advice) was furnished to the delinquent officer, he would have been in a position to demonstrate before the Disciplinary Authority either to drop the proceedings or to impose lesser punishment instead of following blindly the directions in the CVC's report.

(b) The Commission, at present, is being consulted at two stages in disciplinary proceedings, i.e. first stage advice is obtained on the investigation report before issue of the charge sheet, and second stage advice is obtained either on receipt of reply to the charge sheet or on receipt of enquiry report. It, however, does not seem necessary to call for the representation of the concerned employee on the first stage advice as the concerned employee, in any case, gets an opportunity to represent against the proposal for initiation of departmental proceedings against him. Therefore, a copy of the Commission's first stage advice may be made available to the concerned employee along with a copy of the charge sheet served upon him, for his information. However, when the CVC's second stage advice is obtained, a copy thereof may be made available to the concerned employee, along with the EO's report, to give an opportunity to make representation against EO's findings and the CVC's advice, if he desires to do so.

(c) The Special Chapter on Vigilance Management in Public Sector Enterprises envisages that the enquiring authorities, including the Commissioner for Departmental Inquiries borne on the strength of the Commission, would submit their reports to the Disciplinary Authority who would then forward the EO's reports, along with its own tentative views to the Commission for its second stage advice. The existing procedure in this regard may broadly continue. The Disciplinary Authority may, after examination of the enquiry report, communicate its tentative views to the Commission. The Commission would thereafter communicate its advice. This, along with the Disciplinary Authority's views, may be made available to the concerned employee. On receiving his representation, if any, the Disciplinary Authority may impose a penalty in accordance with the Commission's advice or if it feels that the employee's representation warrants consideration, forward the same, along with the records of the case, to the Commission for its reconsideration.

(d) Thus, if on the receipt of the employee's representation, the concerned administrative authority proposes to accept the CVC's advice, it may issue the orders accordingly. But if the administrative authority comes to the conclusion that the representation of the concerned employee necessitates reconsideration of the Commission's advice, the matter would be referred to the Commission¹⁵⁷.

¹⁵⁶ State Bank of India Vs. D.C Aggarwal and another [Date of Judgement: 13.10.1992]

¹⁵⁷ CVC letter No 99/VGL/66 dt. 28th September 2000

6.55.12 Delay in implementation of Commission's advice

Subsequent to the Commissions' first and second stage advice the responsibility for finalization and award of punishment passes on from the vigilance to the personnel department.

Administration may impress upon all concerned and especially the personnel departmental that in view of the shift in responsibility from the vigilance to the personnel, any delay over and above the prescribed time limits for finalization of disciplinary cases will be viewed as misconduct by the Commission and will render the concerned officials of the personnel department and others concerned liable for being proceeded from the vigilance angle with its attendant ramifications.¹⁵⁸

Finally the orders of the Disciplinary Authority in the matter of disciplinary cases or affidavits to the courts, should in no case imply that any decision has been taken under the influence of the Commission; as the Commission is only an Advisory Body and it is for the Disciplinary Authority to apply its mind subsequent to obtaining the Commission's advice and take reasoned decisions on each occasion¹⁵⁹.

6.55.13 Need for self-contained speaking and reasoned order by Disciplinary authorities:

There have been instances where the final orders passed in disciplinary cases by the competent disciplinary authorities did not indicate proper application of mind, but a mere endorsement of the Commission's recommendations which leads to an unwarranted presumption that the DA has taken the decision under the influence of the Commission's advice. Further, in practice, the DA's do not provide a copy of Commission's advice to the employee's concerned. The cases where the final orders do not indicate proper application of mind by the DA and or non supply of Commission's advise, are liable to be quashed by the courts. The CVC's views/advices in disciplinary cases are advisory in nature and it is for the DA concerned to take a reasoned decision by applying its own mind. The DA while passing the final order, has to state that the Commission has been consulted and after due application of mind, the final orders have been passed. Further, in the speaking order of DA, the Commission's advice should not be quoted verbatim¹⁶⁰.

6.55.14 Reducing Delays¹⁶¹ in Departmental Inquiries;

One major source of concern is that the guilty are not punished adequately and more important they are not punished promptly. This is because of the prolonged delays in the departmental inquiries procedure. One of the reasons for the departmental inquiries being delayed is that the Enquiry Officers have already got their regular burden of work and this inquiry is to be done in addition to their normal work. The same is true for the presenting officers also.

One of the causes for delay in departmental inquiries is appointment of Presenting Officer. To avoid such delays, the Commission, in exercise of its powers conferred on it under Section 8(1) (g) of the CVC Ordinance 1999, directed all Departments/Organisations within its jurisdiction to indicate, the names of the Presenting Officer to be appointed while referring the cases to the

¹⁵⁸ CVC letter No. 000/VGL/18 Dt. 3rd March 2003

¹⁵⁹ CVC letter No. 003/DSP/3 Dt. 26th February 2004

¹⁶⁰ CVC letter No. 003/DSP/3/31364 Dt. 15/01/09

¹⁶¹ Schedule of time limits in conducting investigations and departmental inquiries has been proved by CVC letter no. 000/VGL/18 dt. 23rd May 2000

Commission for 1st Stage advice and where the Disciplinary Authority proposes to initiate major penalty action. After the Commission endorses the proposed action, the Departments/Organisations will ensure that the Enquiry Officer and Presenting Officer are appointed simultaneously after service of charge-sheet and immediately on denial of charges by the Charged Officer.

The Departments/organisations should also indicate appropriate disciplinary authority in each case while referring the case to the Commission for first stage advice. The Commission in turn will communicate its advice to the Disciplinary Authority/Secretary of the Ministries with a copy to the CVO for follow up action.¹⁶²

Disciplinary Authority should also ensure that the Presenting Officer(s) is/are given the custody of all the listed documents in original or certified copies thereof along with his appointment order so that the delay in disciplinary proceedings are reduced¹⁶³.

6.56 Reference of cases to CBI:

The Department / Organisation, at the initial stage itself, depending on the facts of the case, should decide whether the case is to be entrusted to the local police or CBI¹⁶⁴.

6.57 Sanction for Prosecution (under Section 19 of the PC Act):

1. CVC directive No.8 (1) (h)/98(3) dt 27th November 1998 provides as under;

(i) In respect of CBI reports/cases in which the Commission's advice is not necessary, the competent authorities may exercise their mind and give or refuse sanction for prosecution under the PC Act, within the time limit of 30 days from the date of receipt of request from CBI; and

(ii) In respect of the cases of Presidential appointees, in which the Commission's advice is required, the competent authorities may furnish their comments within 30 days to the Commission and give the sanction of prosecution or otherwise, within a period of 60 days from the date of receipt of request from CBI.

If at the end of the above said time limits no decision had been given by the competent authorities, then the CVC will take an adverse view and deem it as a case of misconduct on the part of the competent authority.

2. Further CVC vide Circular No. 33/09/10 dated 28/09/2010 has decided the following:

i) That in case the commission does not receive communication/ comments on CBI report within 3 weeks, the commission would suo moto tender its advice. Any communication / comments received from competent authority after three weeks but before 31 days will be entertained by the commission as a reconsideration request and CVC within a fortnight, after consulting experts will tender its advice. Any communication / comments received from competent authority after 31 days of receipt of CBI's report will not be entertained and will be sent to DoPT for final decision.

¹⁶² CVC letter No-8(1)(g)/99(2) Dt 19th Feb. 1999

¹⁶³ CVC letter No. NZ/PRC/1 Dt. 26th February 2004

¹⁶⁴ CVC letter No. 98/DSP/9 Dt. 13th August 2003

6.58 Guidelines to be followed by the authorities competent to accord sanction for prosecution u/s. 19 of the PC Act¹⁶⁵.

i) Grant of sanction is an administrative act. The purpose is to protect the public servant from harassment by frivolous or vexatious prosecution and not to shield the corrupt. The question of giving opportunity to the public servant at that stage does not arise. The sanctioning authority has only to see whether the facts would prima-facie constitute the offence.

ii) The competent authority cannot embark upon an inquiry to judge the truth of the allegations on the basis of representation which may be filed by the accused person before the Sanctioning Authority, by asking the I.O. to offer his comments or to further investigate the matter in the light of representation made by the accused person or by otherwise holding a parallel investigation/enquiry by calling for the record/report of his department.

iii) When an offence alleged to have been committed under the P.C. Act has been investigated by the SPE, the report of the IO is invariably scrutinized by the DIG, IG and thereafter by DG (CBI). Then the matter is further scrutinized by the concerned Law Officers in CBI.

iv) When the matter has been investigated by such a specialized agency and the report of the IO of such agency has been scrutinized so many times at such high levels, there will hardly be any case where the Government would find it difficult to disagree with the request for sanction.

v) The accused person has the liberty to file representations when the matter is pending investigation. When the representations so made have already been considered and the comments of the IO are already before the Competent Authority, there can be no need for any further comments of IO on any further representation.

vi) A representation subsequent to the completion of investigation is not known to law, as the law is well established that the material to be considered by the Competent Authority is the material which was collected during investigation and was placed before the Competent Authority.

vii) However, if in any case, the Sanctioning Authority after consideration of the entire material placed before it, entertains any doubt on any point the competent authority may specify the doubt with sufficient particulars and may request the Authority who has sought sanction to clear the doubt. But that would be only to clear the doubt in order that the authority may apply its mind proper, and not for the purpose of considering the representations of the accused which may be filed while the matter is pending sanction.

viii) If the Sanctioning Authority seeks the comments of the IO while the matter is pending before it for sanction, it will almost be impossible for the Sanctioning Authority to adhere to the time limit allowed by the Supreme Court in Vineet Narain's case.

ix) Sanctioning Authority should not be less than Appointing Authority.

6.59 Difference of opinion between CBI and Administrative authorities

The Commission has decided that where there is difference of opinion between the Deptt./organisation and the CBI in cases where the latter have recommended prosecution under PC

¹⁶⁵ SC decision in Vineet Narain vs Union of India AIR 1998 SC 889

Act etc., the Commission would hold a joint meeting with the representatives of CBI and concerned Deptt./organisation. In such a meeting the CVO of the Deptt./organisation should take a brief from the disciplinary authority in this regard. However, if the DA wishes to attend the joint meeting, the Commission has no objection to it¹⁶⁶.

6.60 Refusal to sanction prosecution - reasons thereof¹⁶⁷

Ref: CVC's Instruction No 8(1)(h)/98(3) dt 27/11/98.

Please refer to the Commission's instruction referred to above regarding the time limit for Sanction of Prosecution. The Commission has further examined the matter with reference to the cases where Sanction of Prosecution was refused by the competent authorities. It is a fact that the provisions for Sanction of Prosecution is meant to grant reasonable protection to Public Servants and not to shield the guilty. The grant of sanction or refusal for Prosecution is made by the competent authority after a clear-cut application of mind, as the same is an administration function performed in quasi-judicial manner. It, therefore, logically follows that the competent authorities should record reasons even in cases where sanction for prosecution is not accorded.

2. In view of the above, it is brought to the notice of all concerned authorities that the reasons for not granting sanction for prosecution should also be recorded by the competent authorities in the form of a speaking order, while communicating the same to the CBI.

6.61 Non-interference with investigation of CBI:

It has come to the notice of Commission that in a 'trap' case, which was still under investigation by the CBI, the departmental authorities, based on representation of the accused, wrote to the CBI contending that it was a false/ cooked up case and claiming that the accused was 'innocent'. Viewing it seriously, the Commission has found it not proper – even objectionable- on the part of the Department to have written to the CBI questioning the fairness of investigation based on the version of the accused. This, in fact, amounted to undue interference with the due process of law. It needs to be kept in mind that the CBI is a professional agency and that in the course of its investigation the accused persons will also be afforded reasonable opportunity to explain their version of events. Interference by departmental authorities at a time when a case is still under investigation by CBI is, therefore, neither desirable nor justified¹⁶⁸.

6.62 Standard of proof in Departmental Enquiry:

The standard of proof required in a departmental oral inquiry differs materially from the standard of proof required in a criminal trial. A disciplinary proceeding is not a criminal trial and that the

¹⁶⁶ CVC letter No.. 003/DSP/9 Dt.8th January 2004

¹⁶⁷ CVC letter No 98/DSP/11 dated 03 Mar 1999

¹⁶⁸ CVC Circular No 20/7/08 dt 08-07-08

standard of proof required in a disciplinary inquiry is that of preponderance of probability¹⁶⁹ and not proofs beyond reasonable doubt¹⁷⁰.

6.62.1 Preponderance of probability:

The phrase "burden of proof" is not defined in the Evidence Act. In respect of criminal, cases, it is an accepted principle of criminal jurisprudence that the burden is always on the prosecution and never shifts. This flows from the cardinal principle that the accused is presumed to be innocent unless proved guilty by the prosecution and the accused is entitled to the benefit of every reasonable doubt. The expression "burden of proof" has two distinct meanings: (1) the legal burden, that is, the burden of establishing the guilt and (2) the evidential burden, that is, the burden of leading evidence.

The criminal justice system follows the principle that the guilt of an accused should be proved beyond reasonable doubt it is for the prosecution to prove beyond reasonable doubt that the accused has committed an offence with requisite mens rea.

The Civil Justice System stands on a bit different footing. In Civil cases the person who asserts a fact need not prove it beyond reasonable doubt. Instead we have "Preponderance¹⁷¹ of Probability" for him.

The standard of proof required in the departmental proceedings is that of preponderance of probability and not proof beyond reasonable doubt. Where there is some material which the authority has accepted and which material may reasonably support the conclusion that the employee concerned was guilty, it was not the function of the Tribunal to review the material and arrive at an independent finding¹⁷².

The normal rule which governs disciplinary proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. A fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved.

¹⁶⁹ CVC letter No.001/VGL/82 Dated: 11th February 2002 - It has been brought to the notice of the Commission that in Indian Airlines, departmental proceedings have been initiated and brought to successful completion in a case which emanated from a complaint that an official had demanded illicit gratification from a user. The crucial witness in the proceedings was the complainant who could not be personally present; a videotape of the complaint was utilised in the proceedings and it was considered sufficient to establish the case through preponderance of probability.

¹⁷⁰ Union of India vs Sardar Bahadur SLR 1972 P 355

¹⁷¹ Evidence that persuades a judge to lean to one side as opposed to the other, during the course of litigation. The judge will perceive the evidence of one side as outweighing the other based on which side has the most persuasive or impressive evidence. The strength or "weight" of evidence is not decided by the sheer number of witnesses because the judge decides on the credibility of witnesses and give their testimony weight accordingly.

¹⁷² Manerandan Das vs. Union of India, 1986(3) SLJ CAT CAL 139

6.63 Legal assistance to the Charged Employee:

Where the rules do not provide for the engagement of a professional lawyer and where the facts are simple and do not require any special legal expertise to cross-examine witnesses, the charged official is not entitled to have a legal practitioner. He cannot also insist upon the services of a particular officer selected by him for assisting him¹⁷³. An employee does not have unconditional right of being represented by an advocate regardless of special circumstances. Denial of legal representation neither violates principle of natural justice nor it amount to denial of reasonable opportunity.¹⁷⁴

However, whenever a delinquent officer is pitted against a legally practitioner, refusal to grant permission to the delinquent officer to be represented through legal practitioner tantamount to denial of reasonable opportunity.¹⁷⁵

Section 30 of the Advocate Act provides that an advocate is entitled as a right to practice before any tribunal or person legally authorised to take evidence. The word 'authorised to take evidence' denotes a capacity to call for evidence i.e. to summon witnesses and compel production of documents. When statutory rules do not empower Enquiry Officer to compel production of evidence then the lawyer has no right to appear before him by virtue of Section 30 of Advocate Act. Section 30 is in the same words a section 14 of Bar Council Act¹⁷⁶.

The right to be represented through counsel or agent can be restricted, controlled or regulated by statute, rules, regulations or standing orders¹⁷⁷.

Following the aforesaid judgment, the Apex Court in the case of Bharat petroleum Corporation Ltd., Vs. Maharashtra General Kamgar Union reported in (1999) 1 SCC 626 has held as under:

The basic principle is that an employee has no right to representation in the departmental proceedings by another person or a lawyer unless the Service Rules specifically provide for the same. The right to representation is available only to the extent specifically provided for in the Rules.

A delinquent has no right to represent through counsel or agent, unless the law specifically confers such a right. The basic principle is that, an employee has no right to represent in the departmental proceedings by another person or a lawyer unless the Service Rules specifically provide for the same. The right to representation has been made available in restricted way to a delinquent employee. Once the rules and regulations expressly provide for such assistance the right to the delinquent employee is justified and he is only entitled to that right, which that provision provides for. He cannot claim any right beyond the four corners of the said statutory provision¹⁷⁸.

¹⁷³ H.C.Sarin Vs. UOI, AIR 1976 SC 1686

¹⁷⁴ Ganedranath (Dr) vs State of Orissa AIR 1964 Orissa 24

¹⁷⁵ Board Trustees of Court of Bombay Vs. Dilip Kumar, AIR 1983 SC 109

¹⁷⁶ LIC of India vs City Mint. Of Merrut AIR 1968 All 270

¹⁷⁷ Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi, 1993(7) SLR SC 408

¹⁷⁸ HAL vs K. Asokan (WA No 1759/2006(S-DIS), High Court of Karnataka Dt. 29th Nov 2011

6.64 Stay of disciplinary proceedings under the order of the Court:

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

- a) On receipt of notice under Section 80 of Civil Procedure Code;
- b) On receipt of intimation that the impugned officer proposes to file a writ petition;
- c) On receipt of a mere show cause notice (or Role NISI) from a court asking:-
 - i. why the petition should not be admitted; or
 - ii. why the proceedings pending before Disciplinary Authority/ Inquiring Authority should not be stayed; or
 - iii. why a writ or an order should not be issued?
 - iv. The proceedings should, however, be stayed only when a court of competent jurisdiction issues an injunction or clear order staying the same.

6.65 Simultaneous action of prosecution and departmental proceedings:

In serious cases involving offences such as bribery/corruption etc., action should be launched for prosecution as a matter of course. The Hon'ble Supreme Court had held in their various judgments, the important ones being, **State of Rajasthan Vs. B.K. Meena & Others**¹⁷⁹, **Capt. M. Paul Anthony Vs. Bharat Gold Mines Limited**¹⁸⁰, **Kendriya Vidyalaya Sangathan & Others Vs. T. Srinivas**¹⁸¹ and **Noida Entrepreneurs Association Vs. Noida**¹⁸², that merely because a criminal trial is pending, a departmental inquiry involving the very same charges as is involved in the criminal proceedings is not barred.

6.65.1 Simultaneous action: Double Jeopardy

The object of the disciplinary proceedings is to ascertain whether the officer concerned is suitable to be retained in service. On the other hand the object of the criminal prosecution is to find out whether ingredients of the offence as defined in the penal statute have been made. Article 20(3) of the Constitution of India also does not apply to a departmental inquiry because the official is not being tried to for any criminal offence. **Bhagwan Singh vs. Deputy Commissioner Sitapur**¹⁸³ also refers.

6.65.2 Simultaneous action: Contempt of court

On the question of simultaneous action of holding departmental action during pendency of court case, in **Mehra Singh vs. Supdt of Post offices, Jabalpur** the court held that holding of a departmental enquiry during pendency of a criminal prosecution in respect of the same subject-matter would not amount to a contempt of court. The departmental authorities are free to exercise such lawful powers as are conferred on them by the departmental rules and regulations and such exercise of powers bonafide will not come within the mischief of the law of

¹⁷⁹ 1996 6 SCC 417

¹⁸⁰ 1999 3 SCC 679

¹⁸¹ 2004 (6) SCALE 467

¹⁸² JT 2007 (2) SC 620

¹⁸³ AIR 1962 All 232: 1962 (1) CrLJ 554

contempt, especially when the departmental authorities did not publish their orders nor tried to influence the court in any manner.¹⁸⁴

6.66 Objects in Criminal and Departmental Proceedings:

Disciplinary proceedings and criminal proceedings operate in different fields and they have different objectives. The approach and objective in the criminal proceedings and disciplinary proceedings are altogether distinct and different. The object of the departmental proceedings is to ascertain whether an officer concerned is a person to be retained in service or to be otherwise dealt with, by imposing suitable penalty. The object of criminal prosecution is to find out whether the ingredients of the offence as defined in the penal statute have been made out. The holding of a departmental inquiry during the pendency of a criminal prosecution in respect of the same subject matter would not amount to contempt of court, unless there is a stay order issued by the court. In some cases the misconduct charged against an employee also constitutes an offence under Criminal Laws. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against the Public servant are established and if established, what sentence can be imposed on him. In serious nature of cases like acceptance of illegal gratification, the desirability of continuing the concerned Public servant in service in spite of the serious charges leveled against him may have to be considered by the Competent Authority to proceed with departmental action.

If criminal proceedings are held and the employee is convicted then the next question is, whether a departmental action can be taken against the employee on the said conviction; if the employee is on the other hand acquitted then whether departmental proceedings can be instituted against him notwithstanding his acquittal from the criminal court?

6.67 Stay of Departmental Enquiry on account of Criminal Proceedings:

If the material discloses a criminal offence, the alternatives open to the disciplinary authority are to

- (1) initiate disciplinary proceedings in the first instance, or
- (2) initiate prosecution in the first instance or
- (3) initiate simultaneous disciplinary proceedings along with criminal proceeding.

The discretion in this regard entirely vests with the disciplinary authority¹⁸⁵.

6.67.1 It is not necessary to stay departmental proceedings during proceedings before criminal court:

In some cases proceedings before criminal courts are started against an employee either by the police or by the employer or one of his Officers in respect of an act, which also constitutes misconduct. Subsequently when departmental proceedings are sought to be taken in respect of the same act or omission then an objection is generally taken that the management ought to await the result of criminal investigation before starting disciplinary proceedings. Such an objection is generally rejected. The employer has the right to deal with the misdemeanor of the

¹⁸⁴ AIR 1962 MP 72

¹⁸⁵ S.Pratap Singh Vs. State of Punjab, AIR 1964 SC 72

employees even when a criminal case is pending on the same subject matter. The pendency of criminal case on identical facts will not bar a domestic enquiry on the same facts because employer has an interest to see finality of the proceedings initiated by him and to ask the employer to wait till the finalization of the case before civil or criminal courts is hazardous.

6.67.2 No legal bar on departmental enquiry during police investigation:

There is no legal bar for the disciplinary authority to initiate disciplinary action pending investigation by the police¹⁸⁶. When the subject matter of the misconduct is an offence which is being investigated by the police, then the management is not obliged to wait the result of police investigation and departmental action can be taken against the worker concerned or enquiry can be instituted.

6.67.3 Company is not liable to wait for the outcome of the criminal proceedings before proceeding with departmental enquiries:

In the case of **Delhi Cloth and General Mills Ltd. v. Kushal Bhan**¹⁸⁷ the Supreme Court made the observation that the company is not liable to wait till the final outcome of the criminal case unless the case is of grave nature or involves intricate questions of law or fact. This case has been construed by some industrial tribunals to mean that if the case is of grave nature or involves intricate questions of law or fact then departmental enquiry should be stayed. When a person is prosecuted on an offence of grave character then it is fair that departmental enquiry should be stayed. It would be unfair to compel him to disclose the defence which he may take before the criminal court. However, this will depend upon the nature of offence and the evidence and material collected against the Public servant during investigation or as reflected in the charge-sheet. If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were kept pending on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty, his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest, if the case so warrants.

6.67.4 If enquiry is held and worker is dismissed then subsequent acquittal from criminal court has no effect:

As stated above, the departmental authorities need not wait for the outcome of the criminal case. One of the corollaries of this principle is that if the departmental authorities do not wait for the outcome of the criminal case and hold an independent enquiry and as a result thereof the worker is dismissed or discharged then the decision of the departmental enquiry is not affected or is liable to be set aside by subsequent acquittal or discharge by criminal court. If it were otherwise then this would mean that the departmental authorities must wait for the outcome of the criminal proceedings.

6.67.5 The legal position in respect of acquittal in criminal case and departmental action is summarised as under:

a. The normal rule is whenever the accused is honourably acquitted and totally exonerated in the criminal case; a disciplinary proceeding should not be initiated against him. But if the disciplinary authority is of the opinion that there is sufficient evidence and good grounds to

¹⁸⁶ B.Balaiah Vs. D.T.O. Karnataka SRTC, 1982(3) SLR Kar.675

¹⁸⁷ AIR 1960 SC 806

proceed with the departmental action, the disciplinary authority can certainly initiate departmental action.

b. Where the accused is acquitted giving benefit of doubt, the disciplinary authority can initiate disciplinary action against the employee, because, the standard or proof in a departmental inquiry is lighter than that in a criminal proceeding. Whereas the criminal court insists on proof beyond all reasonable doubt, in a departmental action, proof of preponderance of probability is sufficient. Evidence, which may not be sufficient for a conviction by a court of law, may be sufficient to establish the charge in a departmental action.

c. Even-though the case might have ended in acquittal, the evidence before the criminal court may disclose serious departmental lapses on the part of the accused in which case, the disciplinary authority may take departmental action against the accused employee for such lapses.

d. Where the criminal case ends in acquittal on technical grounds like defective charge or defective procedure or want of sanction for prosecution where necessary or where the complainant and witnesses are absent, in all such cases, the disciplinary authority may initiate disciplinary action against the employee in spite of his acquittal by the Criminal Court¹⁸⁸.

6.67.6 Effect of Conviction from Criminal Court on Departmental Proceedings:

a) When a person is convicted then it justifies the dismissal order:

When an employee is dismissed and subsequently on the same charge he is convicted, then the dismissal is justified and cannot be interfered. Ordinarily it is open to the owner to await the result of criminal court without holding enquiry and the principle is applicable even though the dismissal is prior to conviction. The employer may wait for the outcome of criminal proceedings and if in such circumstances the employee is held guilty by a competent criminal court then the departmental enquiry by the company is superfluous. When the workers were found guilty by a criminal court it cannot be said that the facts which are at the basis of the charge admitted of an interpretation in favour of an accused person. Even if no Charge-sheet is served, that is immaterial.

b) Departmental action cannot be based on conviction alone in absence of rules:

In one case the rules required that the enquiry is not necessary if an employee is punished on the ground of conduct which led to his conviction on a criminal charge. It was held that the regulations required the disciplinary authority to impose the penalty on the basis of the conduct and not on the basis of conviction because there is no obliteration of the misconduct of the official concerned. There is distinction between dismissing an official for conduct and dismissing him for his conviction.

6.67.7 Effect on Departmental action when Conviction is set aside:

a) Doctrine of double jeopardy contained in Article 20(2) of the constitution does not apply to departmental enquiry:

¹⁸⁸ Laxman Lal Vs. State of Rajasthan, 1994(2) SLR Raj.600

Article 20(2) of the Constitution of India provides that no person shall be prosecuted and punished for the same offence more than once. In order that this article should apply the subsequent prosecution must be for the same offence and it is not applicable when the subsequent prosecution is for a distinct and different offence though based on substantially similar allegations of fact. The doctrine of *autrefois acquit* or double jeopardy as enunciated in Article 20(2) of the Constitution is limited to criminal proceedings only and does not extend to departmental enquiries.

b) If dismissal is based on conviction and the said conviction is set aside in appeal or revision then the dismissal becomes invalid:

c) When dismissal is due to conviction and conviction is set aside then the employer is entitled to full back wages:

d) If dismissal is based on departmental enquiry then it is not affected by conviction being set aside in appeal:

6.67.8 The Allahabad High Court discussed the entire case-law and came to the following conclusion:

- (i) Prosecution and departmental proceedings on identical charges can continue simultaneously.
- (ii) The decision rendered in the criminal case is not binding on the Enquiry Officer who conducts disciplinary proceedings. Similarly, findings recorded in the departmental proceedings are not binding on the court as neither is the appellate authority of the other.
- (iii) Normally on an honourable acquittal of the employee by the criminal court, the departmental proceedings, in deference to the findings recorded by the court, are not initiated but if the acquittal is based on a technical ground or the employee concerned is given benefit of doubt, the departmental proceedings on the same charges can still be initiated and if already pending can be concluded uninfluenced by the order of discharge or acquittal recorded in the criminal case or the said grounds.
- (iv) The departmental and the criminal proceedings can be initiated simultaneously against the delinquent employee and he can, also be subjected to departmental proceedings as per rules; and that the disciplinary proceedings can also be continued and concluded without waiting for the conclusion of the criminal case against the employee on the same charges provided the case does not involve complicated questions of fact and law, or that the ultimate decision in the departmental proceedings would necessarily not be based entirely on the result of the criminal case itself.
- (v) If the case involves complicated questions of fact and law and the matter is pending in the criminal court, where the employee is to face his trial, the departmental proceedings, as the Supreme Court says, should be stayed.
- (vi) In order to find out what is "complicated question" help can be taken from the meaning given to the phrase "substantial question of law" which means the question not settled by the Supreme Court in regard to which there is difference of opinion and so the question

is debatable. The position with regard to complicated question of law cannot be different and it will depend upon the facts of each case.

In the case of **Hindustan Petroleum Corporation Ltd. vs. Sarvesh Berry**¹⁸⁹, it has been held in Para 9 that “it is not desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the back drop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law.”

It is, therefore, clarified that stay of disciplinary proceedings is not a must in every case, where there is a criminal trial on the very same charges and the concerned authority may decide on proceeding with the departmental proceedings after taking into consideration the facts and circumstances of each case and the guidelines given by the Hon’ble Supreme Court,¹⁹⁰

6.67.9 Action to be taken in cases where government servants are convicted by criminal courts:

Legally speaking, when a person is convicted by a Criminal Court, the same shall remain in force until and unless it is reversed or set aside by a competent court in appeal. The mere filing of an appeal and / or stay of the execution of the sentence do not take away the effect of conviction, unless the appeal is allowed and the conviction is set aside by the appellate court. In the case of **Om Prakash Narang Vs Union of India and Ors**¹⁹¹, the Full Bench of the CAT held that during pendency of appeal in a criminal case, only the sentence is suspended and not the conviction itself. In view of this, the competent disciplinary authority may proceed with the instruction/completion of disciplinary proceedings, including imposition of the penalty as prescribed in the relevant disciplinary rules, on the basis of conviction imposed on a public servant by a criminal court, notwithstanding the fact that a higher court on an appeal filed by the public servant concerned, may order suspension of the “Sentence” passed by the trial court till the final disposal of the appeal.¹⁹²

6.68 Scope for court’s intervention in disciplinary action:

The Court does not interfere with the administrator’s decision unless it is illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it is in defiance of logic or moral standards. The Court would not go into the correctness of the choice made by the administrator and it should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

6.69 Court’s order on vigilance cases - follow up action on¹⁹³

Judgements involving vigilance cases having the President as the disciplinary authority have, ultimately, to be processed and final action taken in the Vigilance Division, Ministry of Defence.

¹⁸⁹ 2004 (10) SCALE Page 340

¹⁹⁰ DOPT OM No. 11012/6/2007-Estt. (A), dated 1st August, 2007

¹⁹¹ (1990) 12 ATC365

¹⁹² DOPT O.M. NO 321/62/93-AVD.III DT 04 Mar 1994

¹⁹³ MOD I.D. No 1040/US-I/VIG/87 dated 18 Feb 91

90 days' time is available for filing SLP or implementing the orders of the Courts. Of late, it has been observed that copies of judgements, in many cases, are not sent promptly by the concerned organizations to the Ministry, and very little time remains for processing the cases in the Ministry, in consultation with the Ministry of Law and CVC. Further, in certain cases, copies of judgements are sent to the Ministry in a routine manner, without offering the considered opinion of the organization concerned, at the appropriate level and without attaching relevant documents. All this results in last minute rush in the Ministry to ensure finalization of the cases within the time-limit and to avoid contempt of Court. Apart from causing sudden pressure on the normal routine of work at various levels in the Ministry, it also puts undue pressure on the decision making authorities to take a decision in a hurry.

2. It has, therefore, been considered desirable to fix time-limits for action at various stages to ensure smooth and timely processing of the judgements of the Courts. The time limits fixed are as follows:-

Where 90 day's time is allowed by the Court for implementation of judgement.

- | | |
|--|-----------------|
| (a) For obtaining copy of the judgement and opinion of the Govt. Counsel thereon | - 1 week |
| (b) For processing of the cases by the concerned HQrs/ Organisation | - 1½ weeks |
| (c) If there are two or more echelons of officers | - One more week |
| (d) If complete papers are received in the Ministry and no back reference is required, the time for examination by the Ministry in consultation with LA (Def), Addl Solicitor General etc. | - 3 weeks |
| (e) For consultation with CVC if required | - 3 weeks |
| (f) For obtaining RRM's orders and passing of final orders | - 2 weeks |

The above given time limits will also cover the time required for transit of papers etc., and wherever necessary special messengers will have to be sent for adhering to the time-limit. Where the court gives less than 90 days time, the time will have to be proportionately reduced and action taken accordingly.

6.70 Minimizing delay in disciplinary cases - need for utmost care and review of cases at regular intervals:

Instructions have been issued from time to time for expeditious disposal of disciplinary/vigilance cases. Despite, abnormal delays continue to take place in disposal of a large number of cases. While reviewing an answer given to an Unstarred Question in the Lok Sabha, Raksha Mantri desired that the instructions regarding finalisation of disciplinary/ vigilance cases should be reiterated to ensure that these cases are finalized as early as possible. All disciplinary and other authorities concerned in the Ministry of Defence and its formations are therefore referred to the extant instructions listed below:

(a) Minimizing Delay in Disciplinary Cases:

Department of Personnel & A.R. issued instructions emphasizing the need for minimizing delays in disciplinary/vigilance cases in deference to wishes of the Prime Minister that no vigilance case should be allowed to linger beyond one year. Accordingly Secretaries in the Ministries and Heads of Departments were requested by the Ministry of Home Affairs to review all cases

pending over one year and to report the results of the review in the form of a half yearly return to them. It is, therefore, necessary that disciplinary cases are finalized with utmost speed as delays in this regard adversely affect discipline, integrity in public services and morale of public servants.

(Reference letter No 129/2081-AVD.I dated 28 Sep 81)

(b) Self Contained, Speaking and Reasoned Orders ^{194, 195}.

Disciplinary proceedings against the employees conducted under provisions of CCS (CCA) Rules, 1965 or any other rules are quasi-judicial in nature. Hence it is necessary that such orders are issued only by competent authorities who have been specified as disciplinary/appellate/reviewing authorities under the relevant rules. Recording of reasons in support of decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy. It is, therefore, impressed upon all concerned that authorities exercising disciplinary powers should issue self-contained, speaking and reasoned orders and these should be communicated under their own signature as disciplinary/ appellate/reviewing powers are quasi-judicial which cannot be delegated to subordinate authorities.

Orders passed by the President or the Central Government, will, however, be authenticated by an officer competent to do so.

(c) Time limit for Passing Orders on the Inquiry Report.

In the cases which do not require consultation with Central Vigilance Commission or the UPSC, it should normally be possible for the disciplinary authority to take a final decision on the inquiry report within a period of three months, at the most. Where this cannot be done, a report should be submitted by the disciplinary authority to the next higher authority indicating the additional period within which the case is likely to be disposed of and the reasons for the same. In cases requiring consultation with the CVC and UPSC also, every effort should be made to ensure that such cases are disposed of as quickly as possible

(OM No 39/43/70-Ests (A) dated 08 Jan 71 from Cabinet Sectt).

(d) Time Limit for Disposal of Appeals.

Although there is no prescribed time limit within which the appeals are to be disposed of, appellate authorities are expected to give high priority to their disposal. In case the number of appeals received or pending with any particular appellate authority is very large, it should be considered if the appellate work itself could be redistributed, so far as possible among a number of officers or equivalent rank, in any case, not below the rank of the appellate authority.

(OM No 39/42/70-Estt (A) Dt. 15 May 71 from DP & AR)

(e) Suspension¹⁹⁶.

¹⁹⁴ Circular No 02/01/09 Dt 15th Jan 2009 from CVC

¹⁹⁵ Office Order No. 51/09/03 Dt 15th Sep 2003 from CVC

¹⁹⁶ MOD letter No 16/1/Vig/84 dated 19 May 1984

In cases other than those pending in Courts, the total period of suspension both in respect of investigation and disciplinary proceedings should not ordinarily exceed six months. Suspension orders should be reviewed first after three months and thereafter from time to time, to ensure that suspension is not unjustifiably continued for an unduly long period.

(OM No 39/33/72-Estt(A) dated 16 Dec 72 from Cabinet Sectt)

In so far as Court cases are concerned every effort should be made to file the charge sheet in the Court or serve the charge sheet on the govt. servant, as the case may be, within three months of the date of suspension.

6.71 Dilatory tactics adopted by the charged officer and remedies

| Sl No | Dilatory Tactics | Remedies |
|-------|---|--|
| 1. | The charged officer asks for copies of listed documents for replying to the charge sheet and supply of copies takes lot of time | As per the latest instructions, copies of the listed documents should be supplied along with the charge sheet. Only voluminous/unwieldy documents could be allowed to be seen at the time of inspection. |
| 2. | The charged officer takes some time before nominating his defence assistant on the plea that he is locating a proper Govt. servant for his defence. | The Inquiry Officer while issuing the notice for preliminary inquiry should ask the Govt. servant to nominate his defence assistant before the date of preliminary hearing or bring his defence assistant along with him on the date of preliminary hearing. |
| 3 | It is noticed that the charged officer gives a long list of additional documents and defence witnesses without properly indicating their relevance. | The Inquiry Officer may fix a day for deciding relevance to avoid protracted correspondence |
| 4 | Charged Officer very often requests for having the assistance of a legal practitioner. This causes much delay | The Inquiry Officer while issuing the notice should inform the charged officer to bring the approval of the disciplinary authority for having the assistance of a legal practitioner failing which his request will not be entertained. |
| 5 | Charged Officer or his Defence assistant submit medical certificate on the date of hearing or he gets admitted to hospital | These delays are unavoidable. It should, however, be seen that Medical Certificate is submitted from the Prescribed/ competent Medical Officer |
| 6 | Charged Officer request for adjournments on flimsy grounds | The grounds should be examined and adjournments should be allowed only where considered absolutely necessary |
| 7 | Charged Officer obtain stay orders from Court/ Central Administrative Tribunal against the continuance of Inquiry | Inquiry Officer should immediately address the disciplinary authority to get the stay vacated at the earliest |
| 8 | A lot of time is taken by the Presenting Officer and the | The Inquiry Officer should normally give 3 days' time both to Presenting Officer and the |

| | |
|--|--|
| Charged Officer and the Charged Officer in submitting their written briefs | Charged Officer to submit their written briefs. However, in exceptional circumstances, this time maybe extended up to 10 days. |
|--|--|

6.72 The Schedule of time limits in conducting departmental enquiries notified vide **Para 41 of special chapter on vigilance management in PSE** is placed at **Appendix –‘O’**

6.73 Flow chart outlining the various stages of Departmental Enquiry till imposition of punishment or otherwise is placed at **Appendix –‘P’**.

6.74 As per Circular No. HAL/P&A/19(3)/2010 dated 18/10/2010, Vigilance Department is to be consulted at following stages of disciplinary proceedings in vigilance cases:

| Stage | DA | Consultation with | Purpose |
|--|---------------------|---|--|
| Draft Chargesheet | MD / FD & Chairman | CVO | For vetting of the draft Chargesheet before issue. |
| | GM & below | Divisional Vigilance Head | |
| Closure of case without instituting Departmental Enquiry | MD / FD & Chairman | CVO | For comments regarding acceptance, non acceptance or partial acceptance of the tentative findings of the DA and about imposition of minor penalty, exoneration, issuance of advisory letter etc. |
| | GM & below | Divisional Vigilance Head | |
| Receipt of Enquiry Report | MD / FD & Chairman | CVO | For comments regarding acceptance, non acceptance or partial acceptance of the report and in advising about the imposition of minor/ major penalty. |
| | GM & below | Divisional Vigilance Head | |
| Appeal | Appellate Authority | All appeal cases need to be referred to CVO irrespective of scale/ grade of the employee. | For comments regarding acceptance, non acceptance or partial acceptance of the tentative findings of the Appellate Authority and in advising about the imposition of minor/ major penalty, exoneration, issuance of advisory letter etc. |

CHAPTER – VII

ORDER OF DISCIPLINARY AUTHORITY

“We must all suffer from one of two pains: the pain of discipline or the pain of regret. The difference is discipline weighs ounces while regret weighs tons.”

- Jim Rohn

7.1 What is meant by Disciplinary Authority?

As per CDA Rules of HAL Disciplinary Authority means an Officer of the Company empowered to take disciplinary action under the rules¹⁹⁷. In other words, Disciplinary Authority is the authority who is competent to punish an employee in disciplinary proceedings. In case of large organizations, the power to appoint and punish may be delegated to subordinate officers by statutory rules. An authority may be competent to impose minor punishment but not major. An authority to impose major punishment can also impose minor punishment. The various disciplinary authorities/appellate authorities for officers from Grade 1 and above, and for the workmen are enumerated in detail in the HAL CDA Rules/Standing Orders respectively.

7.2 Duties of Disciplinary Authority on receipt of Enquiry Officer’s Report on conclusion of DEC proceedings:

- (i) Examine carefully representation if any, against the Enquiry Officer for any bias and pass suitable orders to order for another enquiry or to continue with the same committee.
- (ii) Forward a copy of the enquiry report to the charge-sheeted employee for comments.
- (iii) Consider the comments of the charge-sheeted employee with reference to oral and documentary evidence, analysis of evidence, findings of the enquiry committee, past records and the gravity of proven acts of misconduct and decide the quantum of punishment to be imposed.
- (iv) In cases of multiple charges each charge should be considered separately.

7.3 Action on the Enquiry Report by the Disciplinary Authority:

On receipt of his reply, or if no reply is received within the time allowed, the disciplinary authority will examine the report and record of the inquiry, including the points raised by the concerned Government servant carefully and dispassionately and shall satisfy itself as to the correctness of the findings by giving its independent attention to the weightage of evidence both for and against the charges.

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

¹⁹⁷ Rule 3 (a) (iii) of CDA Rules 1984

(a) If it is observed from the report that the Inquiry officer has deviated from the statutory provisions or the Principles of Natural Justice, the disciplinary authority may refer the case back to the Inquiry Officer for removal of the anomaly. e.g. If a document requested by the Charged officer was not provided, which in the opinion of the disciplinary authority may amount to denial of opportunity of defence to the Charged officer, the disciplinary authority may direct the inquiry Officer to provide the same to the Charged Officer and continue the inquiry.

(b) If the disciplinary authority is not in agreement with the findings of the Inquiry Officer, he may record his reasons for disagreement and proceed accordingly. In case the Inquiry officer has held the Charged Officer guilty and the disciplinary authority, on the basis of the records of the case comes to the conclusion that the charged officer is not guilty, the case may be closed and an order passed to that effect.

(c) If the Inquiry Officer has held the Charged Officer not guilty and the disciplinary authority comes to the conclusion that the charged officer is guilty the report of the Inquiry Officer together with the note of disagreement of the disciplinary authority is sent to the charged officer and he is allowed to make a representation against the same. On receipt of the reply from the charged officer, final orders are passed.

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

In cases falling within the purview of the CVC, the matter is referred to the Commission along with documents of the case and the second stage advice obtained. Consultation with UPSC, where necessary, is also carried out.

The recommendation of the Public Service Commission or the Vigilance Commission (where ever they are consulted) is not binding on the Disciplinary Authority. The Disciplinary Authority will have to apply his mind and arrive at his own decision, on findings and quantum of penalty.^{198, 199, 200}

7.4 It is also not necessary to give any opportunity to make representation on the penalty proposed to be imposed.

(i) Disciplinary authority is not bound to discuss all contentions raised by the delinquent employee and give detailed reasons for its conclusion and if he uses the word “consider”, it is adequate. The ordinary meaning of the word “consider” is to look attentively or carefully.

(ii) The Disciplinary Authority can differ from the Enquiry Officer. Even if the Enquiry Officer had held that the charges are not established, the findings of the Enquiry Officer

¹⁹⁸ K. Abdul Gafoor Vs. High Court of AP, 1996(3) ALT 368 (AP)

¹⁹⁹ Circular No 02/01/09 Dt 15th Jan 2009 from CVC

²⁰⁰ Office Order No. 51/09/03 Dt 15th Sep 2003 from CVC

are not binding on the Disciplinary Authority. Disciplinary Authority is not bound to act on the recommendations of the Enquiry Officer and the punishment awarded by the Disciplinary Authority even in case when the charges are not proved as per the Enquiry Officer's findings, cannot be challenged on the ground that it was made in total disregard of the recommendation of the Enquiry Officer.

The disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, inquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. It is necessary for the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will, therefore, not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings.

When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry²⁰¹.

As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings²⁰².

7.5 In case the Disciplinary Authority is of the view that certain important evidence has not been relied upon in the enquiry a De-Novo enquiry may be ordered.

7.6 Disciplinary Authority needs to keep in mind:

- (i) Disciplinary Authority should not impose penalty for acts outside the charges.
- (ii) The Disciplinary Authority has full discretion to select appropriate punishment giving due regard to the gravity and nature of misdemeanor.^{203 , 204}

²⁰¹ In State Bank of India vs K. P. Narayanan Kutty AIR 2003 SC 1100 it was held the delinquent employee will have to be given an opportunity to persuade the Disciplinary Authority to accept the favourable conclusion of the Enquiry Officer.

²⁰² Punjab National Bank v. Kunj Behari Misra AIR 1998 SC 2713

²⁰³ Circular No 02/01/2009 Dt 15th Jan 2009 from CVC

- (iii) DA then issues final order imposing a specific punishment.
- (iv) Offer comments on the points brought out by the charge-sheeted employee in the appeal preferred by him if any, before forwarding it to the Appellate Authority.

7.7 Forwarding Enquiry Reports to the Charged Employee:

When the Enquiry Officer submits his Inquiry Report to the Disciplinary Authority at the conclusion of the Inquiry, holding the delinquent guilty of all or any of the charges, the delinquent employee is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires. Non-furnishing of the report would amount to violation of rules of natural justice²⁰⁵.

In Karunakar case the apex court held as under:

in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court / Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court / Tribunal comes to be conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court / Tribunal should not interfere with the order of punishment. The Court / Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished. The courts should avoid resorting to short-cuts. Since it is the Court / Tribunal which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court / Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment.

7.8 Note-(i) under para 23 of Schedule-II of CDA Rules²⁰⁶:

“ If a Departmental Enquiry was constituted by the Disciplinary Authority as per Rules, a copy of the Enquiry Report be given invariably to the Delinquent by the Disciplinary Authority whenever any penalty is proposed to be imposed, whether ‘minor’ or ‘major’, and representation, if any, from the Delinquent may be called for thereafter. Thereafter, the Enquiry Report may be considered by the Disciplinary Authority taking into account the representation, if any, of the Delinquent and appropriate penalty imposed having regard to the gravity of the charges etc. and his past records etc”.

7.9 When the Disciplinary Authority should give reasons (speaking order) for his findings?

²⁰⁴ Office Order No 51/09/2003 Dt 15th Sep 2003 from CVC

²⁰⁵ UOI Vs Mohd.Ramjan Khan, AIR 1991 SC 471, Managing Director, ECIL, Hyd. Vs. B.Karunakar, 1993(5) SLR 532 SC

²⁰⁶ HAL/P&A /1992/2005 dt. 7TH Feb 2005

- (i) If the Disciplinary Authority agrees with the findings of the Enquiry Officer, then he need not give any reason.
- (ii) When Disciplinary Authority himself holds the enquiry, then he should give reasons for his findings.
- (iii) If the Disciplinary Authority differs from the Enquiry Officer then it should give reasons.
- (iv) If the Disciplinary Authority differs from the Enquiry Officer but the decision is more favourable to the delinquent, then he need not state the reason.
- (v) The order imposing punishment must contain reasons.
- (vi) An order imposing major penalty is invalid if it does not give reasons and also an opportunity for making representation against the enquiry report.

7.10 Informal Consultation with Vigilance before award of punishment & at the stage of Appeal:

²⁰⁷ Given in Circular No. HAL/P&A/19(3)/2010 dated 18/10/2010. Please refer to Chapter VI, Para 6.74 of the manual for details.

7.11 Mechanism for deciding issues related to Vigilance, wherein divergent views emerge:²⁰⁸

7.11.1 On difference of opinion between the CVO and the chief executive and between the vigilance officers and the head of office: CVC directive

A question has been raised about the procedure to be followed in those vigilance cases where there arises a difference of opinion between the Chief Vigilance Officer and Chief Executive or between the Vigilance Officer and the Head of Office. In this regard it is clarified that with regard to category 'A' cases, which are required to be referred to the Commission for advice, all relevant files including the file on which the case has been examined, are required to be sent to the Commission while seeking its advice. In such cases, the Commission would therefore, be in a position to examine all facts and viewpoints of all the authorities concerned who might have commented on the various aspects of the case. However with regard to category 'B' cases which are not required to be sent to the Commission for advice, if there is a difference of opinion between the concerned vigilance officer and the head of Office, the matter may be reported by the Head of Office to the concerned Chief Vigilance Officer for obtaining orders of the Chief Executive in order to resolve the difference of opinion between the vigilance officer and the Head of Office^{209, 210}.

7.11.2 On Investigation report by Vigilance Department:

²⁰⁷ HAL/P&A/19(3)/2010 Dt. 18th October 2010

²⁰⁸ HAL/P&A/27(1)POLICY/2007/02 Dt 30/10/2007

²⁰⁹ CVC letter No 2N DSP 2 dated 23 Mar 1985

²¹⁰ Para 27 of "Special Chapter on Vigilance Management in PSE"

It has come to Chairman's notice that investigation reports rendered by the Vigilance Department, recommending initiation of disciplinary action etc., against officials prima-facie found guilty of misconducts, are being reviewed by the local Management by appointing a separate committee even after the Competent Disciplinary Authority has ordered the initiation of disciplinary action. Such procedures adopted by the Divisions, after the approval of recommendations in the investigation report by the Competent Authority, are unsolicited and set a wrong precedence. Only, if fresh evidence is available with the local Management, the same may be forwarded to the Vigilance Department for review of the Vigilance report. No separate committee need be constituted to review the vigilance report^{211, 212}.

7.11.3 On parallel investigation:

The competent authority cannot embark upon an enquiry to judge the truth of the allegations on the basis representation which may be filed by the accused person before the Sanctioning Authority, by asking the I.O to offer his comments or to further investigate the matter in the light of representation made by the accused person or by otherwise holding a parallel investigation/enquiry by calling for the record/report of his department²¹³.

7.11.4 Initiation of Administrative / Punitive Action during the pendency of Vigilance Investigation:

During the pendency of Vigilance Investigation, when the relevant records have been requisitioned by the Vigilance Dept, no administrative /punitive action is taken against the concerned employees. In other words, such actions are not to be taken when Vigilance Investigation is initiated²¹⁴.

7.12 Orders by Competent Authority:

On receipt of the report and the record of the enquiry the disciplinary authority will forward a copy of the inquiry report to the Government servant concerned, giving him an opportunity to make any representation or submission with the following endorsement:

“The report of the Inquiry Officer is enclosed. The disciplinary Authority will take a suitable decision after considering the report. If you wish to make any representation or submission, you may do so in writing to the Disciplinary Authority within 15 days of receipt of this letter.”

Where the authority agrees with the findings of the Enquiry Committee, it is not necessary for it to give reasons for the acceptance of the report but where it disagree, it shall record the reasons for such disagreement. The Competent Authority shall thereafter issue an order of punishment. In awarding punishment, the authority shall take into consideration the extent and gravity of the misconduct, previous service record of the person charged and any extenuating or aggravating circumstances of the case.

7.12.1 Composite Cases:

²¹¹ HAL/P&A/20(28)-3/2002/586 Dt 3rd Sept 2003

²¹² HAL/P&A/19(3)/2012 Dt 8th Feb 2012

²¹³ CVC No 005/VGL/11 Dt 12th May 2005

²¹⁴ HAL/P&A/19(3)/2012 Dt 8th Feb 2012

Officers who are themselves implicated in Composite cases do not act as Disciplinary Authority (including for issuance of Advisory / Counseling) in respect of their subordinate Officers who are involved in the same case. In such cases, the next Higher Authority or an independent Authority at the same level, will act as the Disciplinary Authority in respect of such subordinate Officers²¹⁵.

7.13 Further enquiry:

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

Further enquiry when Principles of Natural Justice have not been observed:

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

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

In this context the following observations of the Rajasthan High Court in **Dwarka Chand vs. State of Rajasthan**²¹⁶ are relevant:

“If we were to hold that a second departmental enquiry could be ordered after the previous one has resulted in the exoneration of a public servant the danger of harassment to the public servant, would in our opinion, be immense. If it were possible to ignore the result of an earlier departmental enquiry, then there will be nothing to prevent a superior officer, if he were so minded, to order a second or a third or a fourth or even a fifth departmental enquiry after the earlier ones had resulted in the exoneration of a public servant”.

Action when articles of charge are held as not proved. Having regard to its own findings on the articles of charge, if the disciplinary authority is of the opinion that the articles of charge have not been proved and that the Government servant should be exonerated, it will make an order to that effect and communicate it to the Government servant together with a copy of the report of the Inquiring authority if it has not been given to him earlier), its own findings on it and brief reasons for disagreement, if any, with the findings of the Inquiring Authority.

7.14 Procedure to be followed in case of ‘Sexual Harassment at Work Place’:

²¹⁵ HAL/P&A/19(3)/2013 Dt 5th July 2013

²¹⁶ AIR 1959 Raj. 38

Following the judgment of the Supreme Court in case of **Visakha & Ors vs State of Rajasthan & Ors**²¹⁷, the national Commission for Women has formulated and circulated detailed Guidelines on 'Sexual Harassment at Work Place'.

The above Guidelines also factor in the law laid down by the Supreme Court in their judgment in case cited as **Apparel Export Promotion Council vs A.K Chopra**²¹⁸.

Following the subsequent judgment of the Supreme Court²¹⁹ in the case of **Medha Kotwal Lele vs Union Of India** it has been laid down that the report of the Complaints Committee as envisaged in the judgment in Visakha case would be deemed to be an inquiry report under the relevant conduct rules, and the disciplinary authority would be required to act on the report in accordance with the Rules.²²⁰

The Government has promulgated the Sexual Harassment of Women at Workplace at Workplace (Prevention, Prohibition and Redressal) Act 2013, an Act that seeks to protect women from sexual harassment at the workplace. The Act has come into force from 22nd April 2013.

Sexual Harassment at workplace is violation of Women's right to equality, life and liberty guaranteed in Articles 14, 15 & 21 of the Constitution. Women must be treated with due respect, decency & dignity at the workplace.²²¹

'Sexual Harassment' as defined under the Act includes any one or more of the following unwelcome acts or behaviours (whether directly or by implication) namely:-

- a) Physical contact and advances; or
- b) A demand or request for sexual favours; or
- c) Making sexually coloured remarks; or
- d) Showing pornography; or
- e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

It also provides the following provisions:-

- (i) Internal Complaints Committee
- (ii) Complaint of sexual harassment
- (iii) Duties of the Employer
- (iv) Annual Reports (Section 21 & 22 of the Act)
- (v) Penal for non compliance with the provisions of the Act

7.15 Award of punishment:

The act of awarding punishment must be based on justice, equity and fair play. The Disciplinary Authority will have to consider many aspects before deciding on the punishment. It is necessary to consider the nature of the delinquency magnitude of the charges established and its

²¹⁷ AIR 1997 SC 3011

²¹⁸ AIR 1999 SC 625

²¹⁹ Writ Petition (Cr 1) No. 173-177/1999

²²⁰ D.O No.1/109/7/2009-TS dt August, 2009 of Cabinet Secretary

²²¹ HAL/P&A/19(2)/2013 Dt 20th June 2013

consequences, aggravating or extenuating circumstances, if any, the nature of punishment generally inflicted for such misconduct, past record of the delinquent etc.

The penalty inflicted by the Disciplinary Authority should be proportionate to the gravity of the misconduct proved. It should not be too lenient or too harsh. Courts will be inclined to set aside the punishment if the same is shockingly disproportionate to the misconduct committed.²²²

Further the Disciplinary Authority should not discriminate between the employees in the matter of punishment unless there is justifiable reason for such different treatment. However, an employee can be discriminated if any aggravating/extenuating circumstances exist.

Lastly the order should disclose the process of reasoning by which the Disciplinary Authority arrived at the conclusion that the employee is guilty. The application of judicial mind has to be manifested in the order.^{223, 224}

7.16 Rule 6 of the CDA Rules on punishment^{225, 226} :

The following Punishments may for good and sufficient reasons be imposed on Officers by the Competent Authority empowered to impose such punishments under these Rules:

(i) Minor Penalties:

- (a) Censure;
- (b) Recovery from an officer's pay of the whole or part of any loss caused to the Company on account of his negligence, default, or breach of any regulations or orders of the Company;
- (c) Postponement of Increment(s) of Pay without cumulative effect, for periods to be specified by the Disciplinary Authority.
- (d) Reduction to a lower stage in the same Scale of Pay, without cumulative effect, for periods to be specified by the Disciplinary Authority, and not adversely affecting his terminal benefits;

(ii) Major Penalties:

- (e) Postponement of Increment(s) of Pay, with cumulative effect, with number of increments to be postponed to be specified by Disciplinary Authority.
- (f) Reduction to a lower stage in the same scale of Pay, with cumulative effect, with number of increments to be postponed to be specified by Disciplinary Authority.
- (g) Reduction to a lower scale of pay, Grade or Post;
- (h) Compulsory retirement;
- (i) Removal from Service which shall not be a disqualification for future employment under the Government or a Corporation/ Company owned or controlled by the Government.

²²² UP Road Transport Corporation vs Mahesh Kumar (2000) 3 SCC 450. It was held " Not only the Supreme Court but also the High Court can interfere with the punishment inflicted upon the delinquent employee that penalty shocks the conscience of the Court."

²²³ Circular No 02/01/09 Dt 15th Jan 2009 from CVC

²²⁴ Office Order No 51/09/2003 Dt 15th Sep 2003 from CVC

²²⁵ PC No 528 dt 23/8/1984 amended vide Hal/P&A /19(2)-Vol.VI-PF/2005/79/2400 dt 19th February 2005

²²⁶ HAL/P&A/19(2)/2012 dated 19/03/2012

- (j) Dismissal from service which shall ordinary be a disqualification for future employment under the Government or a Corporation/ Company owned or Controlled by the Government.

Provided that, in every case in which the charge of possession of Assets disproportionate to known sources of income or the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (i) or (j) above shall be imposed.

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

7.17 Rule 11 of CDA Rules 1984 – Procedure for awarding punishment:

(i) No punishment under Rule- 6 except censure shall be awarded to an officer unless he has been informed in writing of the alleged misconduct and has been given adequate opportunity to explain his case in accordance with the procedure laid down in this behalf in Schedule-II. However, while awarding punishment of censure, the officer concerned should be given adequate opportunity to explain his case;

(ii) Notwithstanding anything contained in these rules, it shall not be incumbent upon the authority competent to impose the punishments to follow the procedure here in prescribed before imposing any of the penalties enumerated in Rule-6 on an officer when such an officer has been convicted by any court or tribunal on a criminal charge involving moral turpitude;

(iii) When an increment is withheld under Rule-6, the order shall indicate the period for which the increment has to be withheld and whether or not it shall have the effect of postponing subsequent increments.

7.17.1 The guidelines for imposition of punishment for various misconduct circulated by Corporate Office vide letter No. HAL/P&A/19(1)/PC/2000 dated 15th February 2000 is placed at **Appendix- 'Q'**.

7.18 Rules 12 (b) - Special procedure in certain cases:

Notwithstanding anything contained in Reules-10 and 11, the Disciplinary Authority may impose any of the penalties specified in Rule-6 without enquiry under any one of the following circumstances:

(i) The officer has been convicted on a criminal charge or on the strength of facts or conclusions arrived at by judicial trial; or

(ii) Where the Disciplinary Authority has specified for reasons to be recorded by it writing that it is not reasonable to be recorded by it in writing that it is not reasonably practical to hold an enquiry in the manner provided in this rules; or

(iii) Where the Management has specified that in the interest of the security of the company, it is not expedient to hold any enquiry in the manner provided in this rules.

7.19 Censure

An order of censure is a formal act intended to convey that the person concerned has been held guilty of some blame-worthy act or omission for which it has been found necessary to award him a formal punishment²²⁷.

The order of Censure is intended to convey that the official concerned has been guilty of misconduct for which it has been found necessary to award him of formal punishment. This is recorded in the history sheet of the officer and the fact that he has been censured will have its bearing on his merit of suitability for promotion to higher post.

7.20 Withholding of increment

The penalty of withholding of increment takes effect from the date of increment accruing to an officer after issue of orders. It is obligatory on the part of the Disciplinary Authority to specify the period for which the penalty should remain current and also whether the increments would be withheld with or without cumulative effect. The order should specify as to the number of increments to be withheld for the specified period instead of ordering that the next increment be withheld for a specified period. In case no period is specified in the order of penalty, same would remain current till the next due date of increment.

1. **Without cumulative effect:** The increment will be withheld for the specified period and the same would be released as well as further increments would also be released on due dates.
2. **With cumulative effect:** In such cases, the withheld increments would not be released.

The cases where more than one penalty of withholding of increments are imposed by different orders, the effect of first punishment order of withholding of increment will continue for the period specified in the punishment order. Thereafter, the pay of the officer will be raised by giving him increments but for the imposition of the penalty would have been admissible to him and only then the second order of stoppage of increments will be made effective which will continue for the period specified in the second punishment order for withholding of increment and so on.

7.21 Recovery from pay

The penalty of recovery of pecuniary loss caused to the organization should be imposed only when it has been established that the concerned officer was directly responsible for a particular act or acts of negligence for breach of orders which caused the loss. The Disciplinary Authority should clearly state as to how exactly the negligence was responsible for the loss. This penalty should not be imposed for apprehended loss and the amount of recovery of loss ordered as the

²²⁷ There may be occasions, however, when a superior officer may find it necessary to criticize adversely the work of an officer working under him (e.g. point out negligence, carelessness, lack of thoroughness, delay etc.) or he may call for an explanation for some act or omission and taking all factors into consideration, it may be felt that, while the matter is not serious enough to justify the imposition of the formal punishment of censure, it calls for some formal action, such as, the communication of a written or oral warning, admonition reprimand or caution. Administration of a warning in such circumstances does not amount to a formal punishment. It is an administrative device in the hands of the superior authority for conveying its criticism and disapproval of the work or conduct of the person warned and for making it known to him that he has done something blame-worthy, with a view to enabling him to make an effort to remedy the defect and generally with a view to toning up efficiency and maintaining discipline.

major of penalty can be reduced at any later stage if it is found that the amount of loss is less than originally calculated.

7.22 Compulsory retirement/Removal/Dismissal

The officer ceases to draw pay and allowance from the date of removal. The order of removal/dismissal entails forfeiture of past service and deprivation of pensionary benefits.

As compulsory retirement/dismissal/removal result in termination of employment, such order, by its very nature, cannot have retrospective effect.

7.23 Central Government Act - Section 4(6) in The Payment Of Gratuity Act, 1972

In case of Dismissal, notwithstanding anything contained in sub-section (1), —

- (a) The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;
- (b) The gratuity payable to an employee [may be wholly or partially forfeited]—
 - (i) If the services of such employee have been terminated for his riotous or disorderly conduct or any other act violence on his part, or
 - (ii) If the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

7.24 Effective punishment in disproportionate assets cases^{228 229}

The Central Vigilance Commission, on receipt of the report of the Inquiring Authority, advises the disciplinary authority to impose a major or a minor penalty depending upon the circumstances of each case. The specific major or minor penalty to be imposed on the delinquent officer is, however, left to the discretion of the disciplinary authority. This procedure has been followed to maintain a healthy balance between the advisory functions of CVC and the discretionary powers of the disciplinary authority.

2. The Commission has observed that in some cases of proved disproportionate assets/ acceptance of bribe, where it had advised the imposition of a major penalty, the disciplinary authorities have taken much too lenient a view of the matter and imposed only the lowest of the major penalties i.e., reduction to a lower time scale of pay or reduction in rank. The advice of the Commission can thus be said to have been complied with only technically but the penalty imposed is totally incommensurate with the gravity of the lapse committed, ineffective as a deterrent to others, thereby defeating the general objective of all disciplinary authorities to ensure that officers who have been found to be corrupt are not retained in service. Reduction to a lower time scale of pay or reduction in rank would obviously not serve the purpose of such a general objective. The Commission would, therefore, suggest that in cases of all categories of

²²⁸ CVC letter No 4/3/75-R dated 24 Mar 1975

²²⁹ CVC letter No 99/VGL/82 dt 07 Feb 2000

officers against whom disproportionate assets/acceptance of bribe has been proved, the major penalty to be imposed should be ordinarily be that of removal or dismissal from service or compulsory retirement.

7.25 Effective punishment of the corrupt through traps²³⁰

1. One of the main weaknesses in the present system of vigilance is that the corrupt public servants many a time escape punishment. Effective and prompt punishment of the corrupt is a sin qua non to change the present atmosphere of cynical apathy in the organizations under the purview of the CVC. There is a need to the issue of tackling corruption to create a healthy atmosphere that corruption will not be tolerated.

2. There are two courses of action possible against the corrupt public servant. The first is prosecution and the second is departmental action. So far as prosecution is concerned, once the papers go to the court, there is no way in which the action can be expedited. So far as departmental action is concerned, it is within the powers of the disciplinary authorities to ensure that the punishment is effectively meted out. The CVC has already issued instruction No 8(1)(h)/98(1) dated 18.11.98 that the departmental proceedings should be completed within a period of six months. In order to achieve this goal, the engagement of retired honest persons as inquiry officers has also been suggested.

3. While systematic application of these instructions will help in bringing down the overall pendency of corruption cases and also ensure that the corrupt public servants are punished, still the problem of the current atmosphere of cynicism and apathy against corruption remains.

4. In order to ensure that effective punishment is quickly meted out to the corrupt, the following instructions are issued under the powers vested in the CVC in para 3(v) of DOPT Resolution No 371/20/99-AVD.III dated Apr 4, 1999.

(i) In every organization, those who are corrupt are well known. The Disciplinary Authorities and the CVOs as well as those who are hurt by such corrupt persons can arrange for traps against such public servants. The local Police or CBI can be contacted for arranging the traps.

(ii) The CBI and the Police will complete the documentation after the traps within a period of two months. They will make available legible, authorized photocopies of all the documents to the disciplinary authority within two months from the date of trap for action at their end.

(iii) Once the photocopies of the documents are received, the disciplinary authority should initiate action to launch departmental inquiry. There will be no danger of double jeopardy because the prosecution will be launched by the CBI or the Police based on the trap documents would relate to the criminal aspect of the case and the disciplinary proceedings will relate to the misconduct under the Conduct, Discipline and Appeal Rules.

(iv) Retired, honest people may be appointed as special inquiry officers so that within a period of two months, the inquiry against the corrupt public servants involved in traps can be completed.

²³⁰ CVC letter No 3(v)/99/10 dt 1st Dec 1999

(v) On completion of the departmental process, appropriate punishment must be awarded to the trapped charged officer or public servant, if the charge is held as approved.

(vi) If and when the court judgment comes in the prosecution case, action to implement the court decision may be taken appropriately.

5. The intention of the above instruction is to ensure that there is a sharp focus on meting out effective punishment to the corrupt in every organization. Once these instructions are implemented, the atmosphere in organizations is bound to improve because the corrupt will get the signal that they could not survive as in the past banking on the delays taking place in the departmental inquiry process as well as in the prosecution process.

6. In terms of Section 17 of the Prevention of Corruption Act, 1988, an offence punishable under the PC Act can be investigated by a police officer not below the rank of an Inspector of Police in the case of Delhi Special Police Establishment, an Assistant Commissioner of Police in the Metropolitan areas of Mumbai, Calcutta, Chennai and Ahmedabad and a DSP or a police officer of equivalent rank elsewhere. Further, every person, aware of the commission of, or of the intention of any other person to commit any offence, punishable under various sections of IPC including Sections 7 to 12 of the PC Act, in the absence of any reasonable excuse, is required to give information to the nearest Magistrate or Police Officer of such commission or intention in terms of Section 39 of the Cr.PC.

7. The Commission has observed that the number of traps conducted by the police officials, under the provisions of PC Act, do not commensurate with the level of corruption perceived in the country. This could be because (i) there may not be a branch of the CBI in the near vicinity of the complainant and (ii) the people, at large, have reservations in approaching the local police. Therefore, keeping in view the above provisions of Law, and in order to complement the Commission's instructions referred to in para 1 supra, the Commission desires the CVOs to take the initiative in arranging a trap if a person gives a written complaint or a source information to him about the alleged demand of bribe by an official in his organization. For that purpose, he may take on record the complaint, approach the local police or the CBI for assistance in conducting a trap, coordinate closely between the police authorities and the complainant, and ensure secrecy of the entire exercise so that it does not end in a fiasco. Further action in the matter, may, however, be taken in terms of the Commission's instructions dated 01.12.1999, i.e., the CBI and the Police may complete the documentation within a period of two months and make available legible, authorized photocopies of all the documents to the disciplinary authorities for the purpose of departmental proceedings. The CBI or the local Police may, if they so desire, launch criminal proceedings against the concerned employee separately.

7.26 Rule 12(a) – Continuance of Disciplinary proceedings/enquiries after retirement from service

The Officer against whom disciplinary proceedings / CBI enquiries have been initiated or contemplated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof, including imposition of any of the penalties prescribed in the Rules. For this limited and specific purpose, the concerned Officer shall be deemed to have continued in employment of the Company. He will not receive any pay and / or Allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits

(viz: Gratuity and Vacation Leave Encashment), till the proceedings are completed and final order is passed thereon".²³¹

7.27 Amendment to para 11.4, chapter X of Vigilance Manual Vol. I²³²

Para 11.4, Chapter X of the Vigilance Manual Volume I refers to the illustrative types of vigilance cases in which it might be desirable to initiate proceedings for imposing a major penalty. Sub-para (iii) thereof refers to the "Gross irregularity or negligence in the discharge of official duties with a dishonest motive". It has been observed that some of the disciplinary authorities did not initiate departmental proceedings for imposition of a major penalty in the cases involving gross negligence/ flagrant violation of systems and procedures on the consideration that there was no material to prove the element of "dishonest motive". The cases involving gross negligence/flagrant violation of systems and procedures to involve a vigilance angle and the involvement of "malafides" are to be inferred or presumed from the actions of the concerned employee depending upon the facts and circumstances of the case. However, with a view to remove the ambiguity, the Commission has decided to amend para 11.4(iii) *ibid* as under:

"The case involving any of the lapses such as gross or willful negligence, recklessness, exercise of discretion without or in excess of powers/jurisdiction, causing undue loss to the organization or a concomitant gain to an individual and flagrant violation of systems and procedures".

7.28 Appointment /promotion to higher posts of workmen against whom disciplinary proceedings are pending²³³:

Doubts have been raised as to whether the workmen against whom disciplinary proceedings have been initiated and/or criminal/CBI cases have been registered or pending in a Court of Law, could be considered for appointment/promotion to higher posts during the pendency of such cases.

2. It is hereby clarified that the workmen against whom disciplinary/CBI/ Criminal cases as mentioned above are pending or are contemplated are not to be considered for appointment/promotion to higher groups/grade till the final disposal of such cases by the respective authorities. After the cases have been disposed off finally, the promotion of such workmen is to be regulated as follows:

(a) Workmen who are exonerated of the charges in disciplinary cases, may be considered for promotion and, if found suitable, they may be promoted to higher group/grade, as the cases may be and given notional seniority from the date their immediate next juniors were promoted;

(b) Workmen on whom minor/major penalties are imposed may be considered for promotion to higher group/grade only after the expiry of 6 months/1 year for each minor and major penalty respectively and subject to their being found suitable by the DPC they may be promoted to the next higher grade. This period is to be reckoned from the

²³¹ HAL/P&A/19(2)/10 Dt 10th August 2010

²³² CVC letter No 99/VGL/62 dt 29 Nov 99

²³³ HAL/P&A/27(1)/87/1566 dt 25 Feb 1987

date of imposition of the penalty/punishment. Notional seniority is not to be allowed in such cases.

(c) For purposes of deferment of promotion, the classification of punishments as applicable under Time Scale Promotion Scheme (notified vide Amendment No 1 dated 18-4-1985 to PC No 531) is to be followed and punishments imposed during the last 5 years of service in the existing group are to be taken into account while considering the cases of workmen for promotion. In cases involving more than one punishment, deferment of promotion will be cumulative (e.g., for one minor and one major punishment imposed, the promotion will be deferred by one and a half years).

(d) Workmen against whom CBI/Criminal cases are registered and pending are not to be confirmed in their posts or considered for further promotion to higher groups/grade till final disposal of their cases by the concerned authorities. In case of exoneration/acquittal, they may be considered for promotion to higher group/grade and granted notional seniority at par with the workmen mentioned at 2(a) above.

3. The cases falling under Time Scale Promotion may be dealt with under the provisions of Time Scale Promotion Scheme for Workmen.

7.29 Withdrawal of provisions regarding Second show cause notice²³⁴

²³⁵Some instances have come to Commission's notice where there still exist provisions in the Conduct, Discipline and Appeal Rules applicable to the employees of local bodies of union-territory administrations, PSUs/nationalized banks etc under which, the disciplinary authority is required to give a notice to the employee, after considering the Inquiry Officer's report, stating the action proposed to be taken against him and calling upon him to make such representation as he may wish to make against the proposed action. In view of the 42nd amendment of the constitution of India, it is not now necessary that such a provision should exist in the Conduct, Discipline and Appeal Rules. The relevant provision in the CCS (CCA) Rules, 1965 - Rule - has also been amended vide Department of Personnel & AR's notification No 11012/2/77-Estt(A) dated 18 Aug 1978 (copy enclosed). The Commission would therefore advise that necessary action may be taken to delete such a provision if it still exists in the CDA Rules applicable to your organization.

7.30 Continuance of disciplinary proceedings/ imposition of penalty after retirement from service

As Public Sector undertakings (PSUs) are non-pensionable establishments, there is no possibility of imposing any penalty on such deviant employees after their retirement, who might have committed serious lapses while in service, just before their retirement. The gratuity amount

²³⁴ Prior to amendment of Article 311 of the Constitution, vide 42nd Amendment Act, 1976, a duty was cast on the disciplinary authority to afford a reasonable opportunity to the delinquent to show cause against the action which is proposed to be taken against him. On completion of the enquiry by the Enquiry Officer and after submission of his report, if the disciplinary authority is of the opinion that any major penalty should be imposed on the Government servant, it shall give the Govt. servant, a notice stating the penalty proposed to be imposed on him and calling upon him to submit within a stipulated time such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the enquiry. But the need for giving such an opportunity of making representation on the penalty proposed was dispensed with by the 42nd Amendment of the Constitution.

²³⁵ CVC letter No 3N DSP 4 dated 01 Jun 84

also could not be with held unless the person had been terminated consequent to disciplinary proceedings and the question of terminating an employee or imposing a penalty retrospectively, after retirement is not legally tenable.

The Central Vigilance Commission had earlier advised Public Sector Enterprises to make a provision in their CDA Rules to allow continuation of departmental proceedings after retirement of an employee.

7.31 Rule -12(a) of HAL CDA Rules 1984 provides as under:

“The officer against whom disciplinary proceedings / CBI enquires have been initiated or contemplated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof, including imposition of any of the penalties prescribed in the Rules. For this limited and specific purpose, the concerned officer shall be deemed to have continued in employment of the Company. He will not receive any Pay and/ or Allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits (VIZ: Gratuity and Vacation Leave Encashment), till the proceedings are completed and final order is passed thereon”.

The Supreme Court of India upheld punishment of dismissal on a retired Bank employee on conclusion of departmental proceedings after his retirement, on the basis of the above provision. In its judgment dated 18.5.07 in the case of **Shri Ramesh Chandra Sharma vs Punjab National Bank**²³⁶, it has further noted that-

“... it may be true that the question of imposition of dismissal of the delinquent officer from service he has already reached the age of superannuation would not ordinarily arise. However, as the consequence of such an order is provided for in the service rule, in our opinion, it would not be correct to contend that imposition of such a punishment would be wholly impermissible in law”.

The Supreme Court has further held that-

“The said Regulation clearly envisages continuation of a disciplinary proceeding despite the officer ceasing to be in service on the date of superannuation. For the said purpose a legal fiction has been created providing that the delinquent officer would be deemed to be in service until the proceedings are concluded and final order is passed thereon. The said Regulation being statutory in nature should be given full effect.”

“The effect of a legal fiction is well-known. When a legal fiction is created under a statute, it must be given its full effect, as has been observed in **East End Dwellings Co. Ltd vs Finsbury Borough Council**²³⁷.

The Central Vigilance Commission vide its circular²³⁸ has advised all Public Sector Undertakings to amend their CDA Rules to incorporate provision similar to Public Sector Banks which reads as under:

²³⁶ 2007 (8) SCALE 240

²³⁷ 1951 (2) AII E.R 587

²³⁸ Circular No.44/12/07 dt 28th Dec.2007

“The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payments of retirement benefits till the proceedings are completed and final order is passed thereon except his own contribution to CPF”²³⁹.

However all vigilance/administrative functionaries in an organization must invariably keep in mind the date of superannuation of the SPS/CO while handling disciplinary cases and anyone found to have consciously ignored the fact should be held accountable for the delay that may lead to the eventual dropping of the proceedings²⁴⁰.

7.32 Effect of punishment on personnel on contract / training period²⁴¹:

a) In cases of personnel engaged on contract basis, including Ex-servicemen (both Officers and Workmen), and imposed with any major/ minor punishment during the contract period, the contract service should not be extended further. Such personnel should also not be absorbed as regular Officers/ Workmen at the end of the contract period. In other words, their contract service should be terminated at the end of the present of engagement;

b) In cases of Management Trainees/ Design Trainees / Executive Trainees, each major/ minor punishment imposed during the training period will defer their promotion from the Grade in which they are absorbed to the next higher Grade, for a period of two years or one year respectively, as in the case of regular Officers, since the period of training is reckoned as service for the purpose of promotion under Internal Merit Selection (IMS)/ Vacancy Based Promotion (DPC)/ Career Plan Promotion (CPP). The provisions of Circulars Nos. HAL/P&A/27(1)-13/04/43 dated 29/06/07 & HAL/P&A/27(1) - 13/07/67 dated 27/07/07 would be applicable to such personnel;

c) In cases of Diploma Trainees/ Technician Trainees also, Major/ Minor punishments imposed during the training period will defer their promotion from the Scale in which they are absorbed to the next higher Scale , as in the case of regular workmen, since the period of training is reckoned as service for the purpose of promotion to the next Scale. The provisions of Circular No. HAL/P&A/27 (30)-Policy/MPA/2000 dated 30-08-2008(as amended) would be applicable to them.

7.33 Sealed cover procedure:

An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To

²³⁹ This case however must be distinguished from the case of **UCO Bank and Anr. Vs Rajinder Lal Capoor**, (IR 2007 Supreme Court 2129) where it was held that Disciplinary proceedings cannot be initiated against an officer after retirement. Only when a Disciplinary proceeding has been initiated against an officer of the bank despite his attaining the age of superannuation, can the disciplinary proceeding be allowed to continue on the basis of the legal fiction created thereunder, i.e., “as if he was in service”. Thus, only when a valid departmental proceeding is initiated by reason of the legal fiction raised in terms of the said provision, the delinquent officer would be deemed to be in service although he has reached his age of superannuation.

²⁴⁰ CVC letter No. 007/VGL/052 Dt. 27th September 2007

²⁴¹ Ref- HAL/P&A/36(23)/09 DT 2nd September, 2009

qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of misconduct cannot be placed on par with the other employees and his case has to be treated differently. Therefore, in the matter of promotion, he is treated differently.

When an employee is held guilty and penalized and is, therefore, not promoted, the denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified.²⁴²

The procedure and guidelines to be followed in the matter of promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation was reviewed in the light of the judgment dated 27.08.1991 of the Supreme Court in **Union of India etc. vs. K.V. Jankiraman etc.** The procedure to be followed in this regard by the authorities concerned is laid down as under;

7.33.1 Procedure: Company Policy

Promotion of officer who is under Suspension or against whom disciplinary/Criminal proceedings are pending²⁴³

1. The procedure contained in this office memo No HAL/P&A/27(1)-13/91/DM(r) dated 23 Mar 91 has been reviewed. It has now been decided that the following procedure will be adopted in the above cases:

(i) While considering the suitability of officers, who are within the zone of vacancy based promotions/career planning promotions, details of officer(s) falling under the following categories should be brought to the notice of the Departmental Promotion Committee:

- (a) Officers under suspension;
- (b) Officers in respect of whom disciplinary proceedings are pending;
- (c) Officers in respect of whom prosecution for a criminal charge is pending.

(ii) The DPC after assessing the suitability of the Officer coming under one of the categories mentioned above, shall keep the assessment in a sealed cover with the superscription that "Findings regarding suitability for promotion to the grade.... In respect of Shri not to be opened till the termination of disciplinary proceedings/ criminal prosecution/investigation/enquiry against Shri"

The proceedings of the DPC need only contain the note 'The findings are contained in the attached sealed cover'.

(iii) On conclusion of the enquiry/investigation or criminal proceedings which results in dropping of allegation or complaints against officer, the sealed cover shall be opened. In case the officer is completely exonerated, the due date of his promotion will be determined with reference to the

²⁴² Union of India v. K. V. Jankiraman AIR 1991 SC 2010

²⁴³ HAL/P&A/27(1)-13/DMP/93 dated 23 Mar 93

position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior. He may be promoted notionally with reference to the date on which he would have been promoted. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion and if so, to what extent, will be decided by the appointing authority by taking into consideration facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the facts attributable to the employee, etc. These are only some of the circumstances where such denial can be justified.

If there is no vacancy available in the relevant discipline at the time of his promotion, he may be promoted and adjusted against the next wastage vacancy. If any penalty is imposed on the officer as a result of disciplinary proceedings/investigation, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him;

(iv) It is necessary to ensure that the disciplinary cases/investigation instituted against any officer is not unduly prolonged and all efforts to finalise expeditiously the proceedings should be taken, so that, the need for keeping the case in the sealed cover is limited to the barest minimum.

(v) However, if the disciplinary proceedings/investigation goes beyond the validity of the panel i.e., one year from the date of interview, the sealed cover shall not be acted upon and the case of the officer for promotion may be considered by the next DPC and the recommendation of the DPC be kept in the closed cover in the event the disciplinary proceedings and investigation is not completed at the time of conducting the DPC;

(vi) An officer who is recommended for promotion by DPC but in whose case any of the circumstances mentioned in para 1(i) above arises, after the recommendations of the DPC are received but before he is actually promoted, it will be treated as if his case has been placed in the sealed cover by the DPC. He will not be promoted until he is completely exonerated of the charges against him, and the provisions contained above will be applicable in such cases also.

2. This supersedes the instructions earlier issued vide this office memo No HAL/P&A/ 27(1)-13/91/DM® dated 23 Mar 91.

Further²⁴⁴, in order to provide better clarity to the sealed cover procedure in regard to officers in respect of whom disciplinary proceedings are pending, the existing para 1(i) of the above circular is substituted with the following:

“Officers in respect of whom a charge-sheet has been issued and disciplinary proceedings are pending”

²⁴⁴ HAL/P&A/27(1)-13/9 1/355 dated 31 Jul 2001

The above instructions also provide that a Government servant who is recommended for promotion by the DPC but in whose case any of the above circumstances arise after the date of receipt of recommendation of the DPC but before he is actually promoted, would be considered as if his case had been placed in a sealed cover by the DPC. **He shall not be promoted until he is completely exonerated of the charges against him**²⁴⁵.

An officer who is recommended for promotion by DPC but in whose case any of the circumstances mentioned in para 1(i) above arises, after the recommendations of the DPC are received but before he is actually promoted, it will be treated as if his case has been placed in the sealed cover by the DPC. He will not be promoted until he is completely exonerated of the charges against him, and the provisions contained above will be applicable in such cases also²⁴⁶.

Where disciplinary proceedings have been held under the relevant disciplinary rules 'warning' should not be awarded if it is found, as a result of the proceedings, that some blame attaches to the Government servant. At least the penalty of 'censure' should be imposed.

7.34 Review:

The appointing authorities concerned should review comprehensively the case of said Government servants on the expiry of 6 months and subsequently also every six months. The review should, inter alia, cover the progress made in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite their completion²⁴⁷.

In **Delhi Jal Board vs Mohinder Singh**²⁴⁸ the Supreme Court held as under:

"The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the disciplinary inquiry exonerating the officers would have to be given effect to as they obviously relate back to the date on which the charges are framed. The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the seal was opened to give effect to it, another departmental inquiry was started by the department, would not come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection."²⁴⁹

The sealed cover procedure is to be resorted to only after the charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. Moreover, if the charges are that serious, the employee can be placed under suspension & in such situation the employee's case for promotion would automatically be required to be placed in the sealed cover.

²⁴⁵ CVC letter No. 006/VGL/025 Dt. 21st July 2006

²⁴⁶ HAL/P&A/27(1)-13/DMP/93 dated 23 Mar 93

²⁴⁷ Deptt. of Personnel & Training OM No. 22011/4/91-Estt.(A) dated 14.09.1992

²⁴⁸ JT 2000 (10) SC 158

²⁴⁹ Deptt. of Personnel & Training OM No. 22011/2/2002-Estt.(A) dated 24.02.2003

7.35.1 Good and sufficient reasons:

Any of the punishments specified in the CCA Rules can be imposed by the competent authority for good and sufficient reasons. What is a good and sufficient reason is for the disciplinary authority to decide. Nevertheless, action to dismiss or remove a Government servant could not be taken if the reason was not good and sufficient, Arbitrary or capricious or manifestly unfair decisions cannot secure immunity from judicial review. Thus in **Kannia Lal, Vs. State**²⁵⁰ the dismissal of a Government servant on the ground that he had received some money from one person for being paid over the another, which he did, was set aside. The Supreme Court while delivering judgment in the case Union of India and others Vs. J. Ahmed (Civil Appeal No. 2152 of 1969 decided on 22.03.1979) has discussed as to what would constitute misconduct as distinct from lack of devotion to duty and deficiencies attributable to the Government servant. This judgment may be kept in view while deciding whether good and sufficient reasons exist for the imposition of a penalty.

7.35.2 Disciplinary Action and RTI:

Hon'ble Supreme Court of India considered the question whether the orders of censure/punishment, etc. are personal information and the performance of an employee/officer in an organization, commonly known as Annual Confidential Report can be disclosed or not. The Court after hearing the parties and noticing the provisions of RTI Act held²⁵¹:

The petitioner herein sought for copies of all memos, show-cause notices and censure/punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties and also the details of his investments, lending and borrowing from banks and other financial institutions. Further, he has also sought for the details of gifts stated to have been accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is: whether the abovementioned information sought for qualifies to be "personal information" as defined in clause (j) of Section 8(1) of the RTI Act.

We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show-cause notices and orders of censure/punishment, etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

7.35.3 Punishment in Composite Cases:

²⁵⁰ A.I.R. 1959 Raj. L.W. 392

²⁵¹ Girish Ramchandra Deshpande v. Central Information Commissioner and others (2013) 1 SCC 212

In a Composite Case, the punishment can be imposed / cases can be closed in respect of some of the Officers against whom the disciplinary proceedings are completed, pending completion of the case in respect of the others, as the Disciplinary Authority need to take independent decision in each case depending upon the merit of the case and the role of each Officer in the case, though the matter is processed as a Composite Case²⁵².

7.36 Appeal:

Rule 14 of the CDA Rules 1984 provides as under:

- (1) An aggrieved officer may appeal against an order imposing upon him any of the punishments specified in Rule-6 to the Appellate Authority as indicated in Appendix-1 within 45 days if the imposition of punishments with the copy to the Competent Authority.
- (2) The appeal shall contain all material statements / arguments on which the appellant relies and shall not contain any disrespectful or improper language.
- (3) The Competent Authority on receipt of a copy of appeal will forward the same with its comments thereon together with relevant record to Appellate Authority within 15 days.

In a case where an appeal lies and the person charged requests for a copy of the Enquiry Committee's Report and /or enquiry proceedings to enable him to prefer an appeal, the Competent Authority shall supply him with a copy of the Enquiry Committee's Report and / or with a copy of the enquiry proceedings. Similarly, at a request of the person charged the Enquiry Committee shall, during the course of the enquiry also supply him with a copy of the Enquiry proceedings and statement recorded before the Enquiry Committee.

7.37 Review of punishment clause in the Standing Orders:

Appeal provisions as indicated in the Certified Standing Orders, in respect of workmen are to be invoked for processing their Appeals in Disciplinary matters²⁵³.

7.37.1 Consideration of Appeal:

Rule 15 of the CDA Rules 1984 provides as under:

In the case of an appeal an order imposing any of the penalties specified in Rule-6, the Appellate Authority shall consider:

- (a) Whether the procedure laid down in these rules has been complied with and if not whether such non-compliance has resulted in the failure of justice;
- (b) Whether the findings of the Enquiry Committee are based on the evidence on record; and
- (c) Whether the penalty or the enhanced penalty imposed is adequate/ inadequate and passes orders:
 - (i) Confirming, enhancing, reducing or setting aside the penalty: or
 - (ii) In case where penalty is to be enhanced the procedure to be followed; remitting the case to the Competent Authority which imposed or enhanced the

²⁵² HAL/P&A/19(3)/2013 DT 27.02.2013

²⁵³ HAL/P&A/20(13/VOL.III) DT 14.09.2005

penalty or to any other Authority with such direction as it may deem fit in the circumstances of the cases.

7.38 Powers and duties of the Appellate Authority:

Appellate Authority means an officer of the Company empowered to consider appeals and vested with power to confirm, set aside, reduce or enhance the punishment appealed against²⁵⁴.

The Appellate Authority is under obligation to consider

- (1) Whether the procedure has been complied with and if not whether such non-compliance has resulted in violation of any Constitutional provision or in the failure of justice;
- (2) Whether the findings are warranted by the evidence on record and
- (3) Whether the penalty is adequate, inadequate or severe. He can confirm, enhance, reduce or set aside the penalty or remit the case with any direction he deems fit.

The Appellate Authority thus has power even to enhance the penalty in an appeal submitted by the affected employee for relief. While enhancing the penalty, the appellant should be given opportunity to make a representation against such enhancement and in case of enhancement to a major penalty; an inquiry should be conducted if not already held²⁵⁵.

7.38.1 Speaking Orders in Appeal Cases:

The Supreme Court and the High Courts have emphasized that the appellate authorities must give reasons and there should be some discussion of the evidence on record. An appellate authority has a legal duty to deliberate about merit and adjudge it before confirming, enhancing, reducing or setting aside the penalty. The relevant case for the purpose is **Nathaniel Ghosh vs. Union Territory of Arunachal Pradesh**.²⁵⁶

7.38.2 Personal Hearings at Appeal Stage:

It has become fairly clear that the fundamental basis on which it is thought necessary to include if the concept of "reasonable opportunity" the right of personal hearing and putting forward his case at the first stage is that he must have the opportunity of leading his evidence, cross-examining the prosecution witness, pointing out the demeanor of those witnesses and personal appeal to the Enquiry Officer to appreciate that the evidence in the light in which he would like to be appreciated and urge his case or convince him of the weakness of prosecution case and strength of his own case. At the second stage, however, only the right to make representation has been held to be sufficient compliance with the requirement of constitutional protection of giving a reasonable opportunity and the requirement of personal hearing is not thought necessary because at that stage the authority is merely to take his decision from the record before him. The right of personal hearing is intended to be necessary requirement of the concept of reasonable opportunity to show cause only at the stage when evidence is to be led, cross-examination of the witness is to be done and the demeanor of the witness is to be watched and not at the stage when decision is to be taken from record before the deciding Appellate Authority. The proceedings in the departmental proceedings are only quasi-judicial proceedings. All the procedure of an ordinary trial or proceedings in a Court of Law is not

²⁵⁴ Rule 3 (d) (iv) of CDA Rules 1984

²⁵⁵ M.A.Kalam Vs. Registrar, High Court of AP

²⁵⁶ (1980) 2 SLR 733

applicable. The principle obtainable in the court of law even at the stage of appeal the right of personal hearing is a necessary right to do justice between the parties cannot be bodily applied to departmental inquiries which are not bound to follow all the procedure and requirement of a judicial trial or proceedings.

In the case of **F.N.Roy vs. Collector of Customs**²⁵⁷, Calcutta the hon'ble Supreme Court held that where an appeal is preferred by the Government Servant against the order of the disciplinary authority, it is not necessary that he should be given personal hearing at that stage.

7.39 Non-acceptance of the Commission's advice in the matter of appeals:

The Commission tenders its second stage advice before the DA decides on the outcome of the inquiry in the case of major penalty or takes a view on the minor penalty proceedings after receipt of the explanation of the charged official. Sometimes after imposition of the punishment by the disciplinary authority, the charged official makes an appeal. The Appellate Authority is expected to keep the advice tendered by the Commission and decide on the appeal. In case the Appellate Authority decides to deviate from the advice given by the Commission on appeal, the CVO will report this to the Commission which will take an appropriate view whether the deviation is serious enough to be included in its Annual Report.

The Commission further wishes to stress that reconsideration of advice will be only in exceptional cases at the specific request of the DA, before a decision is taken by it to impose the punishment or otherwise. After a decision has been taken by DA or the Appellate Authority the Commission will not entertain any reconsideration proposal. Such cases will be treated only as "deviation" from the non-acceptance of Commission's advice.²⁵⁸ However, the right of the Appellate Authority to differ with the Commission, therefore, not interfered with. The Appellate Authority should satisfy himself that the DA has applied his mind and then take his own independent decision. The Commission, however, would take a view as to whether the 'deviation' in such cases is serious enough to warrant inclusion in its Annual Report²⁵⁹.

7.40 Review of Punishment: CDA Rules

Rule 16 of the CDA Rules 1984 provides as under:

Notwithstanding anything contained in these rules, the Appellate Authority as specified in the Appendix-1 of the rules, suo moto may call for the records of the case within 6 months of the date of the final order and after reviewing case, pass such orders thereon as it may deem fit. Provided that, if the enhanced penalty, which the Appellate Authority proposes to impose, is a major penalty specified in clause (ii) of Rule-6 and an enquiry as provided under Item –III of Schedule –II has not already been held in the case, the Appellate Authority shall direct that such an enquiry be held in accordance with the provisions of said item and thereafter consider the records of the enquiry and pass such order as it may deem proper. If the Appellate Authority decided to enhance the punishment but an enquiry has already been held in accordance with the provisions of the said item-III, the Appellate Authority shall give show cause notice to the officer as to why the enhanced penalty should not be imposed upon him. The Appellate Authority shall pass final order after taking into account the representation if any submitted by the officer.

²⁵⁷ AIR 1957 SC 648

²⁵⁸ CVC letter No. 000/*DSP/1 Dt. 10th Feb 2003

²⁵⁹ CVC letter No. 98/DSP/9 Dt.13 August 2003

7.41 Dispensing with Enquiry:

Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, or where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry, or where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such enquiry²⁶⁰.

However a disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The legal requirement is that the reason for dispensing with the inquiry should be recorded in writing²⁶¹. There is no obligation to communicate the reason to the government servant. It would, however, be better for the disciplinary authority to communicate to the government servant its reason for dispensing with the inquiry because such communication would eliminate the possibility of an allegation being made that the reasons have been subsequently fabricated.

7.42 Special procedure in certain cases:

Rule 12 (b) of CDA Rules 1984 provides as under:

Notwithstanding anything contained in Rules-10 and 11, the disciplinary authority may impose any of the penalties specified in Rule- 6 without enquiry under any of the following circumstances;

- (i) The officer has been convicted on a criminal charge or on the strength of facts or conclusions arrived at by judicial trial; or
- (ii) Where the disciplinary authority has specified for reason to be recorded by it in writing that it is not reasonably practical to hold an enquiry in the manner provided in these rules; or
- (iii) Where the Management has specified that in the interest of the security of the company it is not expedient to hold any enquiry in the manner provided in these rules.

The Judiciary has given the following illustrative cases where it would not be reasonably practicable to hold an Enquiry:

- a) Where a Public servant, particularly through or together with his associates so terrorizes, threatens or intimidates the witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so
- b) Where the Public servant by himself or together with or through others threatens, intimidates and terrorizes the Officer who is the Disciplinary Authority or members of his family so that he is afraid to hold Enquiry or direct it to be held, or,

²⁶⁰ UOI, Vs. Tulsiram Patel, 1985(2) SLR 576

²⁶¹ in clause (b) of Second Proviso to Art. 311 (2)

c) Where an atmosphere of violence or of general indiscipline and insubordination prevails, it being immaterial whether the concerned civil servant is or is not a party to bringing about such a situation.

7.43 Lapses of authorities exercising quasi-judicial powers:

Criteria to be followed while examining the lapses of authorities exercising quasi-judicial powers in accordance with the criteria laid down by the Honorable Supreme Court²⁶².

There should be an uniform approach in examining such cases and it is important not to create an impression that the department was following a policy in targeting only few officials exercising such powers.

Honorable Supreme Court in **K.K. Dhawan's case**²⁶³ held that disciplinary action could be initiated against an official if there was gross negligence in disciplinary or quasi-judicial functions, even where the element of culpability was absent.

The Apex Court laid down the following six situations when disciplinary action could be taken while exercising such power.

- (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty.
- (ii) If there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- (iii) If he has acted in a manner which is unbecoming of a Government Servant;
- (iv) If he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- (v) If he had acted in order to unduly favour a party;
- (vi) If he had actuated by corrupt motive, however, small the bribe may be because Lord Coke said long ago "**though the bribe may be small, yet the fault is great**".

However in the **Zunjarrao Bhikaji Nagarkar vs Union of India**²⁶⁴, the Court ruled that in quasi-judicial functions, an official could exercise discretion and observed that if an error of law was committed by an official, the Government always had a remedy by preferring an appeal.

The Nagarkar decision was thought to have become settled law on this subject until the Larger Bench Supreme Court in the **Union of India vs Duli Chand**²⁶⁵ overruled the Nagarkar decision and restored the ratio of KK Dhawan's case.

Further the Rajasthan High Court in **Dwarakachand vs. State of Rajasthan**²⁶⁶ held that in the case of that if a superior officer holds the inquiry in a very slipshod manner or dishonestly, the

²⁶² CVC Circular No.39/11/07 dt 1st November, 2007

²⁶³ Union of India vs K.K. Dhawan AIR 1993 SC 1478

²⁶⁴ 1999(112 ELT 772)

²⁶⁵ 2006-TIOL-78- SC-MISC-LB

State can certainly take action against the superior officer and in an extreme case even dismiss him for his dishonesty.

The Central Administrative Tribunal, Madras in **S. Venkatesan vs. Union of India**²⁶⁷ held that disciplinary authority can be proceeded against in disciplinary action for misconduct of imposing a lenient penalty.

7.44 Epilogue:

(i) It is important that an investigation and /or enquiry into any irregularities or misconduct be completed within the shortest possible time. Delay in disposal of disciplinary cases is neither in the interest of the concerned employees nor the management. The Departmental Enquiry Committee should conduct regular hearing on a day to day basis and desist from granting adjournments on frivolous grounds as a matter of routine. It is also essential that the procedure laid down in the Conduct, Discipline & Appeal Rules / other relevant rules are meticulously followed. This may be brought to the notice as and when Disciplinary Authority appoints an officer as Enquiry Officer.

(ii) Divisions should monitor the pending disciplinary cases pertaining to vigilance aspects and ensure that these cases are disposed off at the earliest except where compelling circumstances such as stay by Courts etc. are prevailing. These cases should be disposed of within a period of six months from the date of issuance of charge sheet. General Managers are personally responsible for such delays²⁶⁸.

²⁶⁶ AIR 1958 RAJ 38

²⁶⁷ 1999(2) SLJ CAT MAD 492

²⁶⁸ Para 24 (ii) of Schedule II of HAL CDA Rules 1984

CHAPTER VIII

CHECKLIST AND DO'S ' DON'TS FOR VARIOUS FUNCTIONARIES

8.1. Checklist for the Enquiry officer

a. On receipt of appointment order:

1. Check if the order has been signed and issued by the competent Disciplinary Authority.
2. Check if following are enclosed
 - (a) Annexure to the charge sheet
 - (b) Evidence that charge sheet has been served on charged officer
 - (c) Reply, if any of charged officer
 - (d) Appointment order of presenting officer
3. See if charges as stated are clear, unambiguous and emphatic-if not bring it to the notice of disciplinary authority
4. Make a daily order sheet mentioning receipt of appointment
5. Get hold of procedure for holding inquiry in a disciplinary case if not already familiar with in case of doubt consult colleague who has sufficient experience in this area.
6. Fix a Date for preliminary hearing within 10 days and issue notice.
7. Ascertain if presenting officer is legal practitioner.
8. Inform the charged officer in notice that as per rules he can avail the services of a fellow public servant or retired public servant as 'Defence assistant'. In case presenting officer is a legal practitioner even a legal practitioner can be hired as defence assistant.

b. During preliminary hearing:

9. Arrange for a separate room and steno so that proceedings could be recorded. Ensure that there is no outside disturbance.
10. Receive the charged officer and his defence assistant, if any, warmly. There is no need to be officious or rigid. It only hampers smooth conduct of proceedings.
11. In case charged officer has appeared along with a defence assistant, ask about his particulars i.e. name, Designation, and office, No of inquiries in hand, whether legal practitioner etc
12. Ask the charged officer to state in clear terms whether he has any objection to your being the inquiry officer clear the issue of bias.
13. In case charged officer has any objection- stay the proceeding and ask him to make a representation in writing to the revisionary authority and await his decision.

14. In case charged officer expresses confidence in you, proceed further and ask him-whether he
 - (a) Has received charge sheet
 - (b) Has understood the charge(s)
 - (c) Admit the charge(s)

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

15. If all the charges are admitted record the same, get it signed and forward finding of guilt.
16. Fix a time schedule for inspection of listed documents within 5 days, extendable by maximum 5 days.
17. Fix a time schedule for submission of list of additional documents together with their particulars of custodian, and relevance and also list of defence witnesses-10 days extendable by maximum 10 days.
18. On receipt of list of additional documents/witnesses- consider their relevance from defence point of view be empathetic and positive think, " what is the harm in allowing" instead of "why should it be allowed" do not allow documents which you consider irrelevant.
19. Write to custodian of additional documents(s) to provide the document direct to you. Do not entrust this task to presenting officer.
20. Arrange inspection of additional document by charged officer and presenting officer- provide copies to both where possible
21. Prepare a daily order sheet giving details of action taken remember daily order sheet is a vital document. It tells whether requisite procedure is being followed
22. In case charged officer asks for pre-recorded statements of state witnesses and the same are available, ask presenting officer to provide. Allow clear 3 days gap between supply of statements and examination of witness concerned.

c. During regular hearing:

23. Take undisputed documents on record and mark them as Management exhibits (ME1, ME2, etc) or defence exhibit (DE1, DE2 etc) Obtain signatures of PO and charged employee the documents being taken on record. Disputed documents have to be produced through a witness.
24. Ask the presenting officer to conduct examination in chief of state/management witnesses.
25. See that both the prosecution and defence witness understand properly the questions put forth to them.

26. Be alert seek clarifications from witness wherever necessary.
27. Permit cross examination by charged officer/ Defence assistant. If no questions are asked in cross examination, mention in daily order sheet that the charged officer did not avail the opportunity.
28. During cross examination do not permit questions which are scandalous or which aim at solely annoying the witness. Ensure that due respect is given to witness.
29. Permit Re-examination only on new points, which have come up during cross examination.
30. Carefully watch and keep a note of the demeanor of witness. This will facilitate in drawing conclusion if he is trust-worthy or not.
31. Before the close of prosecution case, the presenting officer, may ask for production of additional document/witness. If such a request is made carefully consider.
 - (a) Nature of evidence to be adduced
 - (b) Purpose of evidence
 - (c) Why it was not included earlier at the time of drawing the charge sheet
 - (d) Is it vital to reach the truth
 - (e) Is it in the nature of filling in the Gaps in the evidence already led-if yes, do not allow
 - (f) Hear views of charged officer to the request made by presenting officer.
 - (g) Whether introduction of new evidence facilitate justice.
32. If you consider introduction of new evidence will facilitate justice permit it and treat it like any other piece of evidence
33. Record reasons in daily order sheet for allowing new evidence
34. After close of prosecution's case, ask charged officer to state his defence. Tell him that he is at liberty to be his own witness.
35. Allow charged officer to conduct examination in chief of defence witness, if any permit cross examination by presenting officer and re-examination by charged officer.
36. Make daily order sheet for each day and obtain signature of presenting officer and charged officer/ defence assistant. Give them copy of daily order sheet
37. After close the defence case, question the charged officer generally on the circumstance appearing against him. This requirement is mandatory when charged officer has not examined himself as witness.
38. Ask the charged officer specifically whether he is satisfied with the proceedings and whether he wants to say something more.
39. Throughout the proceedings demonstrate objectivity and unbiased/impartial attitude. Allow all reasonable requests. Reject firmly all unreasonable requests/ obstructions of either party.

40. After close of case of both parties, ask presenting officer to submit his brief in a reasonable time say, one week with a copy to charged officer against signature.
41. Ask charged officer to file reply to presenting officer's brief within reasonable time.
42. As far as possible conduct regular hearing on day to day basis. Allow adjournments only when inescapable.
43. Carefully segregate daily order sheets, record statements of witnesses, documents on record and correspondence in sequential order in separate folders.
44. Disciplinary proceedings should no be stayed except under orders of a Court of Competent Jurisdiction or under the written orders of the DA.
45. If any misconduct occurs during enquiry proceedings then it cannot be decided by Inquiry Officer in the same proceedings.

d. Ex-parte inquiry:

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

e. Evaluation of evidence

53.
 - a) Read the charges carefully
 - b) Break them into sequential steps (links)
 - c) Determine facts which are necessary to prove each link. In other words frame issues/questions which must be answered to prove a given fact
 - d) Carefully scan undisputed documentary evidence and link it with facts in issue.
 - e) Examine record of examination in chief, cross examination relating to disputed document(s) and determine how much reliance can be placed on it.
 - f) You have already observed demeanor of witnesses, who appeared before you. To assess their reliability consider

- (i) Their involvement and interest in the outcome of the case
 - (ii) Were they actually present on the scene of occurrence?
 - (iii) Have they come to know the details through someone; how reliable is that source
 - (iv) During examination in chief, were they repeating the story like a parrot
 - (v) What is the general reputation of witness?
 - (vi) What is his background?
54. Answer to above questions will enable you asses to what extent the witness is reliable.
 55. Marshal all reliable evidence and link it to facts which you consider necessary to be proved.
 56. Link proved facts to charge and give your finding based on preponderance of probability.
 57. Findings must be based only on due analysis of evidence Oral & Documentary adduced during the Inquiry. Reliance should be placed only on the facts, which have come through evidence, which the charge sheeted official had opportunity to refute, examine or rebut.
 58. Analyze the evidence meticulously, be objective and judicious.
 59. Findings should be specific and not inconclusive.
 60. Draw rational conclusions as a prudent person would by considering the total evidence, also noting, who said it when and in what circumstances, whether what was said or done was consistent with the normal probability of human behavior.
 61. Do indicate in the Inquiry report the relation between the imputations, evidence and conclusions after considering each article of charge separately.
 62. Inquiry report should clearly bring out whether an article of charge stands proved, partially proved or not proved.
 63. The charge against the delinquent employee should not be deemed to be proved by the weakness of the defence.
 64. Write your report. Each page of the report should be initialed apart from your full signature at the end. The report should be submitted with a covering letter to the Disciplinary Authority accompanying the following;
 - (a) Original Report
 - (b) List of Documents including charge sheet and explanation thereto.
 - (c) Deposition folder
 - (d) Daily Order Sheet File
 - (e) Written briefs of both the parties.
 - (f) Correspondence folder

You should not hold back any paper relating to the enquiry. After submitting the report, Enquiry Officer becomes functus-officio as you have no further role to play in the matter.

8.2 Important don'ts for Enquiry Officer:

1. Do not delegate function of holding the enquiry to anyone else.
2. Do not hold enquiry according to your own methods. There is a prescribed procedure to follow.
3. Do not continue with the proceedings (it has to be stayed) if a representation of the Charged Employee alleging bias against the Enquiry Officer is pending consideration.
4. Do not postpone preliminary hearing simply because the Charged Employee could not arrange for defence assistance.
5. Do not call for the documents or examine a witness to decide the question of their relevance.
6. Do not requisition additional documents from the disciplinary authority. Do not ask the Presenting Officer to collect them. You have to write direct to the authority in whose custody or possession these documents lie.
7. Do not question the decision of a Head of Department to with-hold documents on grounds of public interest.
8. Do not throw responsibility of calling defence witnesses on the Charged Employee.
9. Do not enter into argument with a Controlling Authority if it is unable to relieve a particular employee, in the interest of Public service, to render defence assistance in the case pending before.
10. Do not insist that witnesses may be produced in any particular sequence before you. The order in which the witnesses may be examined has been left to the respective parties.
11. Do not administer oath to the Witnesses.
12. Do not question the witness extensively right at the outset. The witnesses should be examined in accordance with the prescribed procedure.
13. Do not interfere frequently when a witness is being examined, cross-examined or re-examined. The salutary principle in this regard is patience and graceful hearing. You may clear your doubts and get clarifications from the witness at the end.
14. Do not allow leading questions, except in cross-examination. Do not put leading questions to the witnesses yourself,
15. Do not allow adjournments on flimsy grounds.
16. Do not allow "New evidence" to fill up gaps. It should be allowed if there is an inherent lacuna in the evidence already recorded.
17. Do not proceed ex-parte, if the Charge-sheet has not been delivered to the Charged Employee.

18. Do not allow defence assistance when the Charged Employee is appearing as his own witness or when he is answering the mandatory questions, towards the close of enquiry.
19. Unless he opts to examine himself, do not examine a co-accused in a common proceeding as a witness against the other co-accused.
20. In a joint trial do not allow cross examination of a defence witness by the other Charged Employee. Only Presenting Officer can cross-examine a defence witness.
21. Do not go for local inspection of the site of the incident except when accompanied by the Charged Employee and the Presenting Officer. Better make a local inspection after the prosecution evidence has been recorded. Do not collect information there from persons who have not been cited as witnesses.
22. Do not supply copy of the written brief of the Charged Employee to the Presenting Officer.
23. Do not take into consideration the written brief of the Presenting Officer if filed after the expiry of the due date and receipt of the brief of the Charged Employee. If you do not wish to exclude it from consideration, you have to send a copy thereof to the Charged Employee with an opportunity to file a rejoinder.
24. Do not take into consideration any matter or evidence which was not adduced during the course of enquiry. No importance should be given to surmises, conjectures, whims or your personal knowledge of the matter not on record.
25. The Enquiry Officer shall not examine himself as a Witness. If he does so, he should cease to be the Enquiry Officer.
26. Statements of Witnesses examined at the Preliminary Enquiry cannot be relied upon without those witnesses deposing at the regular enquiry and presenting themselves for cross-examination by the Charged Officer or by the Defence Assistant.
27. Enquiry Officer cannot compel the attendance of any Witness. It is the duty of Presenting Officer and Defence Assistant to produce their respective Witnesses.

8.3 Guidelines for the presenting officer:

The aim of the inquiry officer, presenting officer and the defence is to bring out truth so that justice is secured to the Charged Employee. In order to discharge his duties efficiently, the presenting officer:

1. Should examine properly his order of appointment and that of the inquiry officer to satisfy himself that there is no legal flaw and that the orders have been attested by an authority competent to authenticate them. A useful hint in this regard is that in case these orders are signed by the authority who had issued the charge sheet, they are, normally, in order.
2. Should have discussion with the investigating officer and also have a look on the report of preliminary enquiry along with connected records to get first hand knowledge of the case (it may again be pointed out that this exercise is to enable him to get first hand knowledge of the case only. The report of preliminary enquiry cannot be used during the course of inquiry);

3. Should acquaint himself fully with the departmental rules and technical aspects of the issues in dispute.
4. Should attend the preliminary hearing along with the original records. In this hearing, he should assist the inquiry officer in framing of issues, where necessary, and also quickly to arrange for the inspection of listed documents by the Charged Employee and supply to him of the earlier statements recorded during investigation of the witnesses proposed to be examined in regular inquiry.
5. Should examine all documents to be produced in support of articles of charge and to arrange for proof of the documents which the charged employee does not admit to be correct and hence would need to be proved.
6. Should remember that on the first day of regular hearing, the various documents will be marked as exhibits and taken over by the inquiry officer. For the purpose he must be ready with such documents duly detached and separated from the main files, and arranged in proper sequence. It will save not only time of the court, but also himself from a lot of embarrassment.
7. Should be polite towards the Charged Employee and the defence witnesses and should not lose their sympathy.
8. Should refrain from attacking character of the Charged Employee unless it becomes absolutely unavoidable due to exigencies of the case.
9. Should before-hand decide what aspects of the case he wishes to be borne out by which witness(es) so that in the examination-in chief, he can restrict evidence of each prosecution witness to the facts best known to him. He should not examine him on other points which though exist in his knowledge do not depend upon his testimony.
10. Decide the proper sequence in which he wishes to examine his witnesses. It is not essential for him either to examine all the witness listed in the charge sheet or to examine them in the order in which they are mentioned therein. The presenting officer may examine them in the order he thinks best in the interests of presentation of the case. He may dispense with needless witnesses.
11. It shall be best for him to examine his witnesses in a logical sequence i.e. a witness whose evidence pertains to the earliest part of the prosecution story should be examined first. And so on. It shall help him to unfold the story in a proper sequence. The moment he feels that enough evidence has been brought on record to prove the charge against the delinquent employee he may drop the remaining witnesses and close his case.
12. However, he must take care to lead all evidence at the proper time because to recall a witness or to introduce fresh evidence is a difficult process and can be resorted to only when there is an inherent lacuna in the evidence already recorded and that too with permission of the inquiry officer. But should it become necessary, he may make a request giving his reasons after he has produced all other evidence and the recording of defence evidence is yet to begin.
13. Examine the investigating officer as the last witness and, that also, if necessary.

14. Must follow the cross-examination of his witnesses carefully and to re-examine them to clarify any important point, or to put the records straight in deserving cases;
15. Should remember that re-examination has a limited role only as pointed out above. We know a number of case in which reckless re- examination resulted in spoiling effectiveness of the witness which had been examined all the witnesses he had to and before the defence case begins.
16. Where necessary, to make timely request to the inquiry officer for production of some new or additional evidence not mentioned in the charge sheet. The right stage for making such a request is after he has examined all the witnesses he had to and before the defence case begins.
17. Must satisfy himself about trust-worthiness of the defence before their examination begins.
18. Must cross-examine the defence witnesses ably and tactfully to bring out truth and to expose hollowness of their testimony where necessary. He may discredit them by impeaching their trust-worthiness.
19. At the close of inquiry, sum up arguments or file a written brief. He must understand that since the burden of proof is on the prosecution, he should be able to show, with reference to the documentary and oral evidence produced during the inquiry, that the articles of charge have been proved substantially.
20. Take care that his written brief is based only on the evidence adduced during the course of inquiry. He should avoid reference to any extraneous matter. Any reference to a document or attaching it with the written brief which was not allowed during the inquiry must be avoided. The inquiry officer, invariably get annoyed by such short practice.

8.4 Checklist for Presenting Officers

1. Always keep a copy of the conduct rules and disciplinary procedure rules.
2. Always keep ready with you the complete file of the case.
3. Always remain vigilant on the charged Officer during inspection of files.
4. Your presence gives message to the charged official to desist from giving wrong or misleading answer.
5. Ensure that the copies of the statement of witnesses and relied upon documents are supplied to the CSO, if not already provided with the charge sheet.
6. Do ensure that the witness understands the question put to him before he answers and ensure that the answers given in vernacular are properly translated in English/ Hindi and duly recorded.
7. Remember that if a document is admitted, a person in possession of it can produce it. If the contents of any document are not admitted, the person who prepared it or maintained it must be offered as a witness so that the CSO can cross examine him.
8. Get your legitimate objections, recorded at the earliest opportunity.

9. Get your questions, if any, declared irrelevant during cross-examination recorded in the proceedings.
10. Please request the Enquiry Officer for his intervention as and when the charged Officer asks any leading questions.
11. Advise your witnesses not to utter anything in despair even in adverse circumstances.
12. Please tell the Enquiry Officer about the true ambit of mandatory questions.
13. Be courteous and respectfully to the defence assistant and the Enquiry Officer.
14. Be truthful while talking to the Enquiry Officer and defence/charged Officer. Maintain your credibility in their eyes.
15. Be careful to include the names of material documents.
16. Encourage tactfully, the defence to examine charged official in his own defence.
17. Examine the locus standi of the defence assistant/co-worker, in a tactful manner, if you feel such examination hurts his ego.
18. Study Charge-sheet and explanation of the accused carefully.
19. Visit worksite where the incident took place to get a clear picture.
20. Check the Charge-sheet thoroughly to note any inherent defects and prepare suitable reply/ explanations.
21. Be alert when defence is re-examining the defence witnesses.
22. Resist with all your might any new evidence sought to be introduced after close of defence case.
23. Consolidate all your objections during the enquiry proceedings.
24. You must insist on getting a copy of the written briefs from the defence assistant.
25. Raise all the relevant law points (say, the allegations even if not proved don't amount to any non misconduct) during written arguments also.
26. Even if at any stage recourse to law court is unavoidable, manage the situation and advise the defence not to follow that course citing lengthy/expensive and compressive process of litigations.
27. Associate yourself, if possible, with the management at the stage of drafting the Charge-sheet.
28. Scrutinize very closely the list of documents and witnesses cited by the Disciplinary Authority along with Charge-sheet.
29. Keep your vital points of prosecution guarded from everybody.

30. Brief your witnesses well in advance and let them know what questions should be expected in examination and in cross-examination.
31. See your witnesses' tender evidence as per the narration in the Charge-sheet.
32. Tell your witnesses to maintain patience and not to get excited.
33. Ensure that important documents/letters, like arguments are signed by charged official.
34. Ensure that Co-Officer does not sit in the enquiry Officer's chamber during preliminary enquiry.
35. Please see to it that a superfluous document demanded by the charged official is declared "irrelevant" or privileged.
36. Plea strongly any claim of privilege in producing any document.
37. Cross the witnesses of defence effectively with all the skill at your command.
38. Please do not make any case a point of your prestige; otherwise you may be tempted to use foul means for winning the case.
39. Try to attend seminars or other meetings of experts on disciplinary proceedings.
40. Try to learn computer/internet and remain update on recent case laws.
41. While being respectful, do not be afraid of Enquiry Officer.
42. Keep abreast with law relating to service regulations.
43. Anticipate what the charged official is likely to admit; then, omit the evidence intended to prove admitted facts.
44. It would be desirable to meet them in advance and refresh their memory by referring to their statements recorded.
45. See your witnesses' tender evidence as per the narration in the Charge-sheet.
46. When accused is to be cross-examined, please check if there is any discrepancy in the explanation, given to the Charge-sheet and statement given later during the enquiry and cross-examine him on this basis.
47. Exercise your right of re-examination of your witness if you find that new point has come in cross-examination.
48. If your witness becomes hostile stop his examination and cross-examine him.
49. Keep an eye on the procedural aspect at different stages.
50. During Cross Examination the presenting Officer is advised-

- To keep eye contact with the witness.
- To begin cross-examination with a purpose and not to ask questions without an object or to ask relevant questions.
- Not to put a material question straight –away.
- Not to repeat questions.
- Not to get excited while asking questions.
- To stop cross-examination when the desired version has come out from the witness.

8.5 Important don'ts for Presenting Officer

1. Do not go to attend the proceedings without doing your homework properly.
2. Do not hob-nob with the charged Officer
3. Don't hesitate to consult other learned or experienced persons/advocates, if you have doubt.
4. Don't use your influence with Enquiry Officer in getting favourable verdict from him.
5. Don't accept undue hospitality from charged official.
6. Don't question the admitted facts.
7. Don't allow 'leading questions' to a witness in his Examination-in-Chief. Leading questions may be permitted in Cross-Examination.
8. Don't recall a witness for re-examination till it is absolutely necessary and is in the interest of justice.
9. Don't ask questions in a mechanical or routine manner, on self explanatory documents, or put questions to the witnesses making them repeat an accepted or adequately proved fact.
10. Don't allow the forum for changing the service conditions, for amending certain special types of provisions existing in the department.
11. Don't consult the defence witnesses or approach them before their cross-examination by you.
12. Don't demand adjournments unless extremely unavoidable.

8.6 Role and Functions of charge-sheeted employee / co-employee (defence assistant)

Following is the role and functions of Charge-sheeted employee / Co-Employee:

1. Scrutinize very closely the list of documents and witnesses cited by the DA along with charge sheet. Take this opportunity to lodge your objections in such a manner so as to eliminate / exclude all irrelevant document / witnesses by building up proper pleas.
2. Inspection of documents for preparing defence.
3. Submission of written explanation to the charge sheet within the prescribed time.

4. Appear before the enquiry committee at the appointed time along with the co-employee.
5. Give proper reply during mandatory questions put to you by the Enquiry Officer.
6. Entitled to get the list of witnesses / documents relied upon by the prosecution.
7. Get your legitimate objections, wherever required, recorded at the earliest opportunity. Don't displease the EO while doing so.
8. Do not consult the witnesses or approach them before their cross-examination by you.
9. Examination of defence witnesses / documents.
10. Cross-examination of prosecution witnesses / documents.
11. Re-examination of defence witnesses / documents.
12. Request the EO for his intervention as and when the PO asks any leading questions to the prosecution witnesses.
13. Offering for self examination.
14. Participation in the enquiry proceedings without seeking adjournment on frivolous grounds or indulging in delay tactics.
15. Be courteous and respectful to the PO and the EO. Don't level allegations of bias against them without any ground.
16. Following will be Violation of the rights of C.O
 - (a) Non-supply of the relevant documents.
 - (b) Not giving opportunity to cross examine.
 - (c) Non supply of a copy of the report of E.O.
 - (d) Examining witnesses at the back of C.O.
 - (e) Relying upon the materials/documents against C.O. without giving him an opportunity to explain the same

8.7 Dos and Don'ts for witnesses

- (a) Accept the responsibility of witness as part of your job
- (b) Reply only to the questions asked, either in Examination-in-chief or during cross examination.
- (c) Be brief in cross examination.
- (d) While being respectful, do not be afraid of EO. Place your points politely but forcefully.
- (e) If reply is already given, say so and EO will read it out.
- (f) Do not go beyond what you have seen as eye witness.
- (g) Do not enter into an argument in cross examination.

- (h) Come prepared when you are called to tender your evidence.
- (i) Don't accept undue hospitality from charged official or accept any 'gift' from him.
- (j) Remember your evidence is very important and case may depend on your evidence.

8.8 Role of HR staff

HR Dept has a major role to play in the conduct of the Departmental Enquiry proceedings. As already stated, they should assist the Disciplinary Authority right from the stage of processing the Preliminary Enquiry Report, preparation of charge sheet, consideration of explanation, assisting the Disciplinary Authority in finding a suitable Enquiry Officer and Presenting Officer to conduct the proceedings, etc.

One major area of lacuna which has been observed has been the inordinate delay in concluding the departmental enquiry proceedings. In this connection, CVC has come out with a time frame to conclude the disciplinary proceedings which have been conveyed to all HR Heads, vide Corporate Office Letter No; HAL/CO/VIG/47/99 dated 20/3/99. Moreover it becomes incumbent on part of the HR to monitor progress of all disciplinary cases as they have to file statistical returns on them to Corporate Office periodically. Copy of the letter mentioned above is attached as **Appendix – 'R' with annexure I to IV.**

8.9 Relevant provisions from IPC, Evidence Act and PC Act have been given in Appendix 'S'

8.10 A list of Circulars / Office orders / letters forming basis of the contents of the Manual are attached as Appendix – 'T'

JUDICIAL AND DEPARTMENTAL PROCEEDING: DIFFERENCE

JUDICIAL PROCEEDINGS

1. It is based on the principle that the accused is innocent till offence is **“proved beyond all reasonable doubt.”**
2. This is a trial by statutory authority with power to punish. It delivers a judgment.
3. Procedure is sacrosanct. Law of procedure and law of evidence are applicable.
4. Objective of Judicial Proceeding is Protection of public.
5. Attendance of witnesses is compelled.
6. Magnitude of punishment is prescribed for each offence.

DEPARTMENTAL PROCEEDINGS

1. It is based on the principle of **"Preponderance of probability"**.
2. This is a fact-finding exercise by advisory body to find out the truth. It gives a report to Disciplinary Authority.
3. All materials, logically probative are permissible. Procedure is based on principles of natural justice.
4. Its objective is Discipline in organization.
5. Attendance of witnesses cannot be compelled.
6. Size of punishment left to Disciplinary authority.

COMMON MISCONDUCT APPLICABLE TO OFFICERS/WORKMEN OF COMPANY

1. Willful insubordination or disobedience whether alone or in combination with others, to any lawful and reasonable order of his superior.
2. Theft, Fraud, breach of trust or dishonesty in connection with the employer's business or property.
3. Willful damage to or loss of employer's goods or property or sabotage.
4. Taking or giving bribes or any illegal gratification or indulging in any corrupt practice in connection with the employment or company's property.
5. Habitual late attendance.
6. Absence without leave for more than 10 days.
7. Habitual absence without leave.
8. Breach of Standing Orders / Code of Conducts or Rules or any Law applicable to the Establishment.
9. Riotous or disorderly behaviour or any act subversive of discipline at the Establishment.
10. Habitual negligence or neglect of work.
11. Striking work or inciting others to strike work in contravention of the provision of any law or rules having the force of law.
12. Carrying concealed weapons, fighting,
 - (a) Causing or attempting to cause bodily injury to another employee, drunkenness, bootlegging or threatening.
 - (b) Conduct which violates the common decency or morality of the community.
13. Slow down in performance of work.

Inciting others to resort to go slow policy or malingering.
14. Engaging in private work or trade without permission.
15. Displaying or distributing in the Factory premises handbills, pamphlets, placards, posters, banners, unauthorized badges etc., without prior written permission of the employer.
16. Attending or holding meetings within the Factory premises without the previous written permission of the employer.

17. Disclosing to an unauthorized person or persons any confidential information in regard to work or any process used in the Company which comes into the possession of officer/workman during the course of his work.
18. Canvassing for a Union or any association or party membership within the factory premises.
19. Gambling or money lending or doing any other private business within the Company's premises.
20. Smoking within the Company's premises in places where it is prohibited.
21. Deliberately making false complaints against co-employees/supervisors, knowing them to be false.
22. Writing of anonymous or pseudonymous letters criticizing co-workers /supervisors of the Company and making false reports against employees.
23. Refusal to accept or to take notice of any order or charge sheet or any other communication served either in person or in due course by post or by notification in the Company's Notice Board.
24. Refusal to accept transfer from one shift, dept., or workplace to another.
25. Deliberately making false statement before a superior or forging the signature of superior or that any other person.
26. Conviction by a court of law for any offence involving moral turpitude.
27. Proxy punching / registering of attendance or abetting in the act of punching / registering attendance of another employee.
28. Picketing or making demonstrations within the factory premises / participation in illegal strike associated with violence.
29. Violation of the terms and conditions of allotment of Company's Quarters or use of Company's Transport.
30. Indulging or participation in political activities within the Factory premises or becoming an office bearer of a Political Party.
31. Impersonation.
32. Entering and / or moving within the Factory premises.
 - (a) Without identity card and / or badge on his person while on duty.
 - (b) Without permission while on duty.
33. Falsification of record and or defalcation.
34. Willfully making false declaration regarding age, qualification & experience, in the application for appointment or when physical fitness examination record is being made or at any other time.

35. Sleeping while on duty or being under the influence of alcoholic beverages / drugs while on duty.
36. Interference in work of other employee / workmen.
37. Using or commercializing or alienating any invention, discovery or patent invented discovered or patented as the case may be in the course of employment under the Company for the benefit of himself or any other person, firm, company or corporation.
38. Applying to outside Organization for appointment / scholarships/fellowship etc., without permission of employer.
39. Spreading false rumours or giving false information which may bring into disrepute the Company or its employees, or spreading panic among the employees.
40. Collection of any money within the premises for purposes not sanctioned by the Management.
41. Acceptance of gift from employees.
42. Unauthorized use of Company's quarters, land or other property.
43. Handling any machine, vehicle, equipment, apparatus etc., not entrusted to his charge.
44. Falsifying or refusing to give testimony when any accident, misconduct or other matters are being investigated.
45. Non-return of Company's properties on or before the stipulated period if the value of the property is not proposed to be recovered from the wages.
46. Failure to wear prescribed Uniform, Coveralls, Safety Clothing and equipment etc., while on duty failure to observe safety measures etc.,
47. Leaving duty station operating in essential services etc., without informing superiors.
48. Acts of sexual harassment.
49. Conduct in Private life, prejudicial to the reputation of the Company.
50. Bigamous marriage without permission where permitted under law/ such marriage where not permitted under law.
51. Breach of duty and obligations during working hours under the relevant Standing Orders.
52. Habitual indebtedness/insolvency.
53. Making representation/grievance/Petitions to VIPs / VVIPs except through proper channel.

54. Possession of pecuniary resources or property disproportionate to the known source of income.
55. Acting in a manner prejudicial to the interests of the Company.
56. Commission of any acts subversive of Discipline or of good behaviour.
57. Acts which are unbecoming of an officer or acts which may bring disrepute to the Company.
58. Committing acts amounting to Sexual Harassment under the Sexual Harassment of Women at workplace (prevention, prohibition and redressal) Act 2013.

General considerations regarding drafting of charge sheet

1. Constituents of Charge.

- (a) It is necessary that the charge should contain all the facts, which combined together make a particular misconduct.
- (b) Each incident is a separate charge.
- (c) It is desirable to mention the name of the offence.
- (d) The place, date and time of incident should be mentioned in the charge sheet.
- (e) When misconduct depends upon offending language, then actual words used should be specified in the charge sheet.
- (f) When dishonesty or bad motive should be mentioned ingredient of the charge: Where dishonesty is the ingredient of any offence, it should be mentioned in the charge. The omission to mention dishonesty is not material where prejudice has been caused. When the charge was that he had altered the entries with ulterior motives, and then he must be told what precisely is the motive attributable to him, otherwise charge would be vague.
- (g) In case misconduct is habitual then the word 'habitual' must be mentioned in the charge sheet. In addition to mentioning the word 'habitual', the past record showing the habit should also be given. In a charge of habitual absence, record should be set out.
- (h) Language in which charge sheet should be given: In giving the charge sheet, care should be taken to see that the charge sheet is given in a language, which the concerned employee can easily understand.

2. General considerations regarding drafting of charge sheet.

- (a) Care should be taken to see that there are no unnecessary words or unnecessary matters given in the charge sheet.
- (b) The use of abbreviations like 'etc' or "any other document" should be avoided. It should be specific.
- (c) Time of incident should always be preceded by the word "about".

- (d) Mis-description of the Charge: Sometimes the charges are mentioned so loosely that the statements are either inconsistent or they do not convey the correct sense. One of the reasons for mis-description in the charge arises from the fact that on occasions, the officer concerned is unable to distinguish between incriminating circumstances and the misconduct itself. Mis-description of the charge is likely to prejudice the employee concerned.
- (e) The charge should not refer to a large number of incidents without mentioning the specific instances. If otherwise, charges are said to be vague.
- (f) Language of the charge sheet should not show that the employee is guilty. Charge sheet is merely a description of allegations against an employee which are still unproved and care should be taken that the language of the charge sheet should not show that the Management has reached the conclusion that the workman is guilty; otherwise it amounts to prejudice and violation of principles of natural justice.

Guidelines on preparation of Charge Sheet.

- (a) Charge should contain particulars of the misconduct and should give the date, time, place, persons, or things involved.
- (b) Language of the charge must be clear, precise, unambiguous, and free from vagueness.
- (c) Separate charge should be framed in respect of each separate misconduct. Multiplication or splitting up of charges in respect of the same allegation should be avoided. If in the course of same transaction more than one misconduct is committed, each misconduct with imputation should be separately mentioned.
- (d) Charge should not contain expression of opinion as to the guilt of the employees as it would mean that the disciplinary authority has prejudged his mind, and prejudged the issue.
- (e) The word 'that' should be used at the commencement of the Article of charge to mean that they are not conclusions but only charges or allegations.
- (f) Charge should not relate to matter, which is already the subject matter of an enquiry.
- (g) Charge should mention the nature of misconduct/misbehaviour.
- (h) Charge should mention the standing order/ conduct rule violated.
- (i) Charge should be accompanied by statement of imputations of misconduct or misbehaviour and lists of witnesses and documents.
- (j) Statement of imputations should contain all relevant facts, in the form of narration.
- (k) Statement of imputations should not refer to the preliminary enquiry report unless it is sought to be relied upon in support of the charge.
- (l) Statement of imputations should not refer to advice of Vigilance Commission, Vigilance Department or any such agency or functionary.
- (m) Statement of imputations should include admission or confession made by the employee.
- (n) Statement of imputation should not enter into discussion of the evidence or express a view on the merits of the case.

- (o) List of witnesses should be complete. Only such of them, who are proposed to be examined in support of the charge, should be mentioned.
- (p) List of documents should be complete. Specific documents should be mentioned and not mere files, unless the whole file is sought to be relied upon. Only such documents should be mentioned which are relied upon.
- (q) Charge sheet should not indicate the penalty proposed to be imposed.
- (r) Charge sheet may be withdrawn, if there are any flaws or for any other reason and a fresh charge may be framed.
- (s) Competent authority should issue charge sheet.
- (t) Charge Sheet should be served with a Memorandum, mentioning the Rule under which the employee is being proceeded against and requiring him to submit his explanation within a specified period considered reasonable or as provided in the Rules.
- (u) In exceptional circumstances, charge sheet may be amended during the course of the enquiry, in which case, sufficient opportunity should be given to the delinquent employee to answer the amended charge.
- (v) Any stipulated time to charged employee to reply.
- (w) Mention the consequences if no reply is received within stipulated time.
- (x) Charge should give details regarding name of the person or the object with which it is concerned. If this is not mentioned, then the charge is invalid as shown hereunder:
 - (i) Disobedience -The word "disobeyed" must be mentioned. What was the direction and what was the conduct, which contravened it, should be specified in the charge.
 - (ii) Theft - Full particular of materials stolen must be mentioned. When the charge was that the worker sold the waste paper belonging to the company, then the party to whom it was sold must be mentioned.
 - (iii) Threat, abuse, or incitement - Sometimes, some words are addressed to a person and they may constitute either threat or abuse. If the person addressed is a superior person, it amounts to insolence. When such words are addressed to particular person, the name of such person should be mentioned. When such words are addressed to a large number of persons, then mentioning of names is not necessary. In the charge of inciting the workers to go on strike, it is necessary to give names of workers incited. Particulars of abusive language used must be given.
 - (iv) Misappropriation - All particulars of amount misappropriated must be given.

(v) Falsification of records - If details of particular items in respect of which the offence of falsification of records was committed are not mentioned, then the omission is fatal to the charge.

(vi) Rioting - In case of riotous incident involving several persons, it is sufficient to specify the particular incident, which amounts to misconduct.

(vii) Negligence - On charge of gross negligence involving the company into considerable financial loss it is not necessary that all the amount of financial loss should be mentioned because it is not relevant to charge. If it is not mentioned, the charge is not bad.

(viii) Bribery - If the employee is charged of taking bribe with the object that he will use his influence with any other public servant, then the words "with any other public servant" must be mentioned in the charge.

(ix) Unauthorized use - When the charge was that car was used as Taxi, then the copy of the check report containing the names of passengers should be given.

2. In certain cases, the manner of commission of misconduct should also be mentioned.

(a) If "A" is accused of cheating "B", then the charge must set out the manner of cheating.

(b) If "A" is accused of having obstructed "B" then the manner in which "B" was obstructed must be said.

(c) If "A" is accused of stealing certain articles from a certain place at a certain time, then the charge is very clear even if the manner is not mentioned.

(d) Charge of deception - It is of no use using expressions like 'fraud', 'fraudulent issue' or 'fraudulent disposal' without giving particulars of fraud.

(e) Immoral character - If a person is charged for this, it is not sufficient merely to state the nature of charge but sufficient details must also be given to enable the accused to understand the exact nature of charge.

(f) Insolent behaviour - Charge is vague if the date of incident, how and why and when the applicant acted insolently against the Manager is not spelt out clearly.

3. Charge sheet should contain facts instead of mere inference or judgment from facts. Some very important defects in the charge in this respect are mentioned herein below: -

(a) Insolent - When the charge is that the worker behaved in an insolent manner and persuaded others to stop the work, it is vague since it is devoid of essential particulars.

- (b) Instigation - The word 'Instigate' means something more than merely asking a person to do a particular act. It should amount to urging further or to provoke or encourage doing an act. In view of this, the stimulating words must come from a person exercising some kind of influence. When particulars of incitement were not given, then the charge is vague.
- (c) Misbehaviour or Indiscipline - Absence of specific particulars as to when, where, with whom and the exact misbehaviour/indiscipline, the charge is said to be vague.
- (d) Unsatisfactory work or Negligence - When the charge is that the work was unsatisfactory, then it is too vague a charge.
- (e) Slow down - The charge that worker was slow and irresponsible in performing his work is vague. It is incumbent on the employer under the Standing Orders to give him sufficient particulars, which would enable him to give a proper explanation and to defend himself, properly. By this charge sheet, employee does not know on what days he slowed down, what is the norm that the employer expects, how he has fallen below that norm.

CHARGE SHEET

Ref.No.:
Name
P.B.No.....
Designation.....
Department.....

Date :

1. Whereas it has been reported that you have committed the following act(s) or omission which constitute(s) misconduct in accordance with Standing Orders / Conduct Discipline & Appeal Rules*:
(Full narration of the accounts of misconduct in detail with particular reference to date, time and place etc.)
2. You are, therefore, charged with having committed the following act(s) of misconduct. (Mention only relevant portion from the clauses applicable to misconduct and refer to number and sub-clause of the Standing Order / CDA Rules against each of the charges).
3. You are required to submit to the undersigned a written explanation/ statement of defence* on or before..... showing cause as to why should you not be dismissed or otherwise punished* for committing the above mentioned act(s) of misconduct.
4. Should you fail to submit your explanation / statement of defence* as directed, it will be assumed that you have no explanation to offer and the matter will be disposed of ex-parte.
5. Please acknowledge receipt of this charge sheet on the duplicate copy enclosed.

Sig of the Disciplinary Authority.

Name :
Designation :

Copy to:

1. Concerned Shift in-charge- He is requested to hand over the charge-sheet to the above named employee after obtaining his dated signature / left hand thumb impression on the duplicate copy enclosed & return the same to the undersigned for record.
2. Concerned Personnel officer]
3. Concerned file.

*Omit which is not applicable.

Terms and conditions for appointing retired officers as EO

CVC letter No 98/MS/23 dated 16 Sep 1999

The Retired Government Officer, hereinafter, referred to as Inquiry Officer (IO):

1. Should not be more than 70 years of age as on the 1st July of the year of his empanelment;
2. Should be in sound health, physically and mentally;
3. Shall not engage himself/herself in any other professional work or service, which is likely to interfere with the performance of his/her duties as Inquiry Officer;
4. Shall be appointed as IOs by the Disciplinary authority of the Charged Officer whose case is entrusted to him/her;
5. Will be entrusted with the Inquiries on 'Case-to-case' basis, by the Disciplinary authority;
6. Shall maintain strict secrecy in relation to the documents he/she receives or information/data collected by him/her in connection with the Inquiry and utilize the same only for the purpose of Inquiry in the case entrusted to him/her. No such documents/information or data are to be divulged to any one during the Inquiry or after presentation of the Inquiry Report. The I.O. entrusted with the Inquiries will be required to furnish an undertaking to maintain strict secrecy and confidentiality of all records/documents/ proceedings etc. All the records, reports etc. available with the I.O. shall be duly returned to the authority which appointed him/her as such, at the time of presentation of the Inquiry Report;
7. Shall be paid a lumpsum remuneration of Rs.5000/- (Rupees Five thousand only), per Departmental Inquiry Report, in a case, by the Department/Organisation to which the charged officer belongs;
8. Shall be paid, in addition to the remuneration of Rs.5000/-, an amount of Rs.1000/- (Rupees One thousand only) per Departmental Inquiry Report, for clerical and Stenographic work, which the IO has to arrange by himself/herself.
9. Will be entitled, besides the above, reimbursement of Rs.500/- (Rupees five hundred only) as Conveyance Charges, per Departmental Inquiry Report (applicable only if the place of Inquiry is a 'A' or 'B-1" class cities);
10. Shall conduct the inquiry proceedings only in the office premises of the Department/Organisation, which engages him/her.
11. The inquiry proceedings are to be conducted at the headquarters of the Departments/Organisations or at the place of concentration of the charged officer(s), witnesses etc. In unavoidable circumstances where the Inquiry Officer has to undertake travel

for conducting inquiry, the rate of TA/DA in such cases may be permissible to the rate applicable to the serving officers of equivalent rank;

12. Shall be provided with a room with furniture and lockable almirahs by the concerned Department/Organisation, which engages him/her on the days of Inquiry;

13. Shall be provided with the stationery/postage by the Department/Organisation, which engages him/her;

14. Shall be terminated from the services of an IO at any time by the Appointing Authority, without notice and without assigning any reasons. However, the concerned authority has to intimate the Central Vigilance Commission the reasons for doing so that the Commission can take in to account those things while reviewing the panel; and

15. Shall submit the inquiry report after completing the inquiry within six months from the date of his appointment as Inquiry Officer to become eligible for payment of remuneration as indicated at item No. 7 to 9.

NOTICE OF ENQUIRY

Ref.No.:

Date:

Name:

P.B.No:

Designation:

Section:

Dept:

Sub: Enquiry Proceedings

1. In the matter of charge-sheet No.....dated..... issued to you. It is hereby informed that the undersigned / the Enquiry Committee* constituted vide Office Order No..... dated..... will hold enquiry in..... (Place) in the said matter on..... (date) and at..... (time).

2. You are advised to appear at the above mentioned enquiry and produce all your witnesses and evidence in support of your defence.

3. At the enquiry, the management evidence and witnesses will be examined first. You will be given full opportunity to examine the evidence and cross-examine the management witnesses on which the charges are based. You will then be given the opportunity to produce defence evidence and witnesses. The Presenting Officer will have the right to examine defence evidence and cross-examine defence witnesses.

4. In the enquiry, you may conduct your defence in person & take the assistance of a representative as per the provisions of the Standing orders / Conduct Discipline & Appeal Rules* applicable to you. Therefore, you may bring a representative to assist you in the enquiry, if you so desire.

5. You should nominate your representative before the enquiry proceeds and should attend along with him if you wish to be so assisted at the enquiry. The evidence and witnesses you intend to produce in the enquiry should also be kept available.

6. Should you/ the prosecution aide fail to appear at the enquiry as aforesaid, the undersigned/committee* will be constrained to proceed with the enquiry ex-parte.

Sig of the Enquiry Officer /

Convener of the Enquiry Committee

Name:

Designation :

Copy to :

1. Shri..... (Presenting Officer)

Shri..... (Members of the Enquiry Committee*)

Shri..... (Security Officer)

Shri..... (Disciplinary Authority)

*Omit whichever is not applicable

SPECIMEN OF DAILY ORDER SHEET FOR PRELIMINARY HEARING

Disciplinary proceedings against Shri
(Proceedings on)

Present:

1.
2.
3.
4.

The EO should read out the constitution of the Enquiry Committee duly signed by the Disciplinary Authority appointing him as the EO and the respective person as PO. He should then proceed to introduce himself and the Presenting Officer and the charged employee. He should read out the charge sheet and confirm receipt of the same from the charged employee. The copy of the charge sheet should be brought on record and should be marked as Ex – P1. He should also ask the charged employee whether he has gone through the contents and has understood the same. He should also confirm from the charged employee whether he has filed any written explanation to the charge sheet and bring the explanation copy on the record and mark it as Exhibit P-2. He should confirm from the charged employee whether he would like to alter or add or delete anything to the explanation. Then the EO should specifically ask the Charged employee whether he admits his guilt or contests the charges leveled against him. If the charged employee admits his guilt and if the charges are minor in nature the EO may proceed to close the enquiry and submit a report accordingly. If the charged employee denies the charges and confirms that he contests them the EO should ask him whether he will defend the case on his own or he would like to have the assistance of a co-employee. Based on the reply, the EO should decide to instruct the charged employee to be present with the co-employee to assist him in the proceedings.

The EO should then direct the presenting officer to submit the list of Prosecution Witnesses and Documents by which he is intending to prove the charges. The presenting officer should submit as to when he is going to produce his witnesses and the same should be recorded. The EO should also ask the charged employee as to present in the next sitting of the DEC with his co-employee without fail. Then the EO should adjourn the meeting to the next earliest date.

EO should record that the enquiry has been adjourned to a specific date and time and should indicate the venue. He should also record that everyone is directed to be present without fail and that no separate communication would be given to this effect. He should also indicate the in case of absence, the enquiry would be conducted ex-parte.

(ROTAC)

(Sd/-(with date)
Presenting Officer

Sd/- (with date)
Charged employee

Sd/- (with date)
Enquiry Officer

Copy of the proceedings received along with the Exhibits.

Sd/-
(Charged Employee)

NB:- the Presenting Officer will produce the witnesses who should be identified as Prosecution Witness (PW-1. PW-2 and so on) and the documents as Prosecution Exhibits (Ex-P1. Ex-P2 etc) and the examination in chief of the witnesses would be made followed by cross-examination, re-examination, clarificatory questions by EO etc in the subsequent sittings.

**SPECIMEN OF DAILY ORDER SHEET
FOR OTHER HEARINGS.**

Disciplinary proceedings against Shri
(Proceedings on)

Present :

1.
2.
3.
4.

As decided in the sitting held on xx-xx-xx, the DEC met at scheduled date and time. The EO directed the Presenting Officer to produce his witness. Accordingly the PO produced Shri xxx as Prosecution Witness (PW-1).

Examination in chief of Shri.xxxxx

“ My name is xxxx . I am working as xxx in xxxx Dept as xxxx. I have put in about xxx years of service in HAL. It is a fact that(evidential part of the case in the form of a statement).... I hereby conclude my statement.

NB:- the contents of the statement should have been briefed to the witness as per the facts in his knowledge by the PO beforehand coming to the enquiry. Wherever required, the witness should produce copy of the relevant documents in support of his statement, which will be taken on record by the EO and marked as Ex-P3 for example. Copies of the same have to be handed over to the defence and a record to the effect that copy of the prosecution document was handed over to the charged employee should be made.

After the statement is concluded the Presenting officer may proceed to elicit more information from the witness in the form of question and answer and declare that the examination-in-chief is concluded.

The EO should then ask the defence whether they are willing to cross-examine the witnesses or not. If the defence forgoes their option to cross-examine, the same has to be recorded. In case the defence asks for a short adjournment to prepare themselves for cross examination in the next sitting the same can be considered by the EO, but the period of adjournment should be reasonable and justified.

In case the Defence proceeds on the same day to cross examine the same has to be allowed and the EO should moderate the cross examination so that irrelevant questions are not put to the witness. During the course of the cross-examination the Presenting Officer has a right to raise objections to the questions put by the defence on the grounds that it is irrelevant, provoking, or insulting in nature. The EO should give a ruling whether the objection is sustained or not. He may also direct the defence to modify the question and proceed. The EO has to be bear in mind that the cross-examination cannot be for eternity. He has discretion to

direct the defence to confine the questions to the case and to conclude it after giving fair and reasonable opportunity to them.

On the closure of cross-examination by the defence the EO should ask the PO whether he would like to re-examine his witness. The purpose of re-examination being to clarify the contradictions in the examination in chief and cross-examination and other relevant clarifications/confirmations and not to bring out new evidence other than what has been stated in the examination in chief. The defence has a right to re-cross examine the witness only if new evidence is brought in re-examination.

After this, the EO may himself ask some clarificatory questions from the witness not with an intention to bring out evidence in support or defence of the charges but only to clarify himself on the aspects of the evidence adduced by the witness.

The EO should ask the PO to present his next witness/document if any and the procedure cited above will be followed. Once the prosecution case is complete, the EO should ask the defence if they have any witnesses/documents to be produced in their defence and asks them to submit a list if so. The manner of recording the evidence of defence witness is similar to the prosecution witness. The only difference being, in case of defence witness, the PO will be having a right to cross-examine the witnesses. The Defence witness would be identified as D-1, D-2 etc and the documents as Ex-D1, Ex-D2 etc. copy of the documents has to be handed over to the PO and EO by the defence.

(ROTAC)

(Sd/-(with date)
Presenting Officer

Sd/- (with date)
Charged employee

Sd/- (with date)
Inquiry Officer

(Sd/- co –employee)

Note : a copy of the Daily Order Sheet should be supplied to the Presenting officer and the Charged employee.

Copy of the proceedings received along with copy of Exhibits)
(Sd/- Charged employee)

Guidelines for evaluating evidence

- (a) In evaluating evidence probabilities must be considered in preference to possibility. Probability means the likelihood of anything to be true as inferred from the knowledge, observation and experience. When two possibilities emerge from a given set of facts, then the one consistent with innocence should be adopted.
- (b) Departmental Officers are the best judges of the merit of the work.
- (c) The charge against a delinquent should not be deemed to be proved by weakness of defence but it should be on the basis of positive and affirmative evidence of guilt given by the prosecution.
- (d) It is not necessary to prove motive.
- (e) Motive to be proved in case of Bribe / Dishonesty with employers business or property.
- (f) Evidence of Trap witness needs corroboration.
- (g) Evidence of the confession of the accused against the co-accused needs corroboration.
- (h) Inconsistency in material points by the same witness weakens the strength
- (i) Credibility of a witness does not depend on status.
- (j) Demeanor of a witness needs due consideration.
- (k) Evidence will have to be weighed and not counted.
- (l) Mere admission of a document is no evidence. The contents will have to be proved.

Annexure-A

Vigilance Report

1. Source

Background of the report- whether based on source information, complaint referred to by the CVC, CTE/CTE type inspector or direct enquiry.

2. Gist of allegations

3. Facts

- a. The relevant facts relating to the issue under examination
- b. Each fact should be supported by documentary evidence denoted as E1, E2 and E3 etc.
- c. While annexing the evidence, the relevant portion of the document should be highlighted and annexed.
- d. There may be several issues in a report which may be conveniently arranged as different paras.
- e. All relevant facts needed to support the observations/conclusion should be gathered and presented.
- f. Evidence presented should be credible and adequate.

4. Observations

Ordinarily, observations are logical deductions arrived at through a set of facts. They are in the nature of objections or anomalies observed with reference to the gathered facts. Observations are also arrived at by evaluating the facts against certain criteria viz rules, regulations, policies, procedures, norms, good practices or normative principles.

5. Response of the officials concerned

Every deviation from rules or procedure cannot be attributed to a malafide/corrupt intent. There may be situations where it may be difficult to achieve the objectives of a task by strictly abiding by the rules. Rules may be circumvented, while expediting the work or in the larger interest of the work, with good intentions. It is, therefore, essential for Vigilance to distinguish between acts of omission and acts of commission.

Response of the management is also necessary in order to clarify differences in interpretation or an understanding of the issues

6. Counter to the response

It should be clearly and convincingly brought out why the explanation given by the management is not tenable.

7. Conclusion

The observations denoting various counts of irregularity, lapses or impropriety should finally lead to a logical conclusion on whether the case involves commission of irregularity/impropriety with the intention of corruption. Undue favour given to a party or obtained for self and its adverse impact on the government or the citizens in terms of additional cost, poor quality or delayed service should be clearly highlighted.

8. Responsibility of officials

Having determined the vigilance angle in the case, the next step is to fix the accountability of the individuals involved in the misconduct; Name of officers should be clearly stated in this paragraph.

The role of each officer should be judged with reference to his prescribed charter of duties. Comments of Disciplinary Authority should invariably be included.

9. Recommendation for action

Recommendation should be clearly spelt out.
Bio-data of the officials reported against in the investigation report should be included in the given format.

10. Recommendation for systematic improvement

Any fraud, corruption, irregularity or impropriety indicates a failure of control mechanism or gaps in systems and procedures at the end of the report the CVO should try to recommend systemic improvements in order to prevent the risk of a recurrence of the lapse/ misconduct.

Annexure-B

Assurance Memo

This is to provide reasonable assurance to the Commission:

- (a) That all necessary facts and relevant evidence have been gathered.
- (b) That all facts and supporting evidence have been duly verified.
- (c) That contested evidence, if any, have been conclusively handled with reference to the facts at the disposal of vigilance.

Annexure C

Format of Bio-Data of officer(s) against whom Commission's advice is sought

1. Name of the officer :
2. Designation :
- (a) At present :
- (b) At the time of alleged misconduct :
3. Service to which belongs :
(Cadre and year of allotment of officers of the organized/
All/India services)
- 4 Date of birth :
- 5 Date of Superannuation :
- 6 Level/group of the present post and pay scale :
- 7 Date of suspension [if under suspension]
- 8 Disciplinary Rules applicable to the officer :

TABULAR STATEMENT

Appendix 'N'
(Refers to Chapter – VI, Para – 6.55.6)

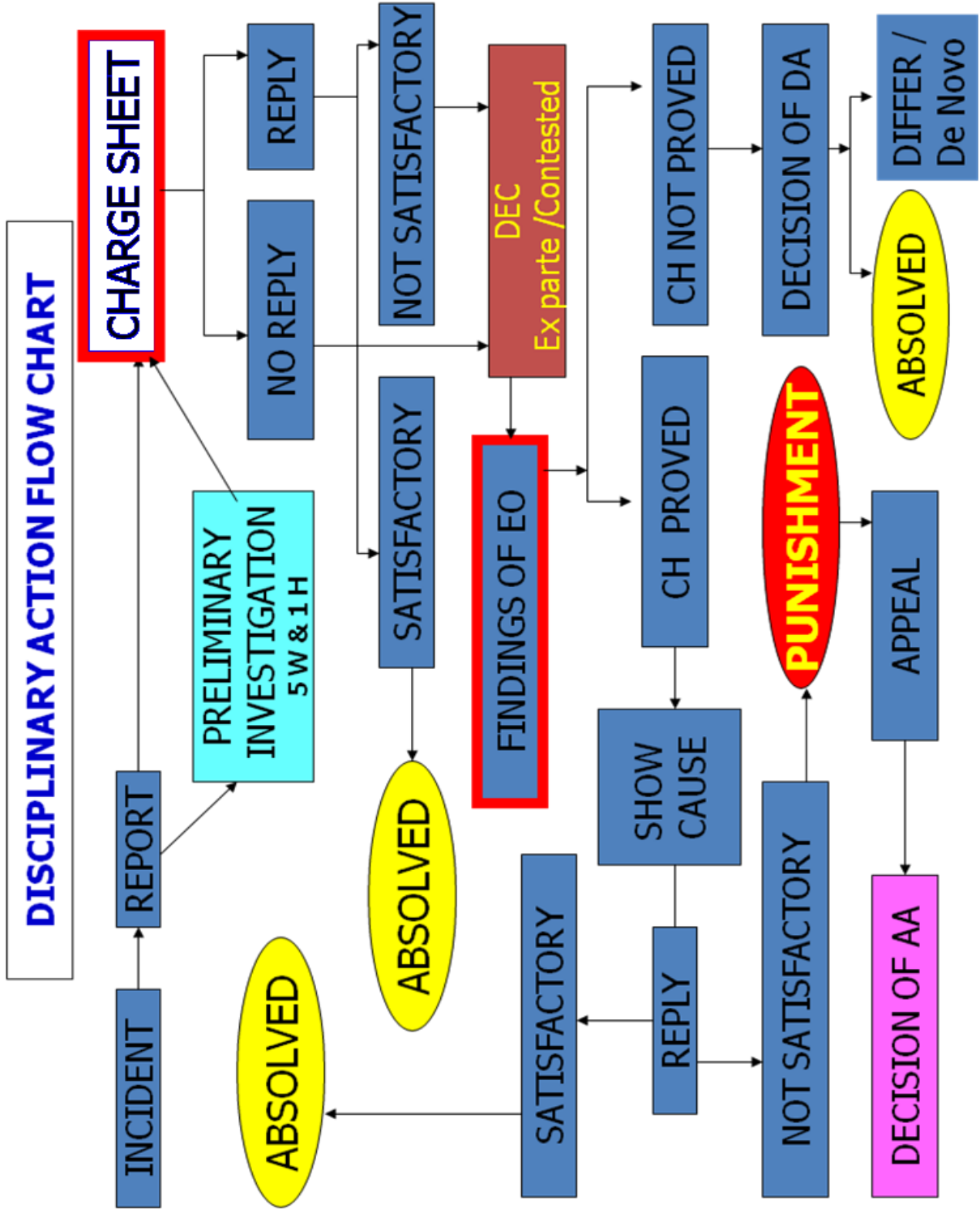
Tabular statements, as prescribed vide the Commission's circular dated 1.12.2008

| Sl. No | Name & Designation of the suspected officer | Allegations in brief | Findings of the investigation / inquiry on each allegation | Defence of the suspected officer | Comments/ Recommendation of the DA | Comments/ Recommendation of the CVO |
|--------|---|----------------------|--|----------------------------------|------------------------------------|-------------------------------------|
| | | | | | | |

PARA 41 OF SPECIAL CHAPTER ON VIGILANCE MANAGEMENT IN PSE

Schedule of time limits in conducting departmental enquiries.

| Sl. No | State of inquiry | Time Limit | Responsible Authority |
|---------------|--|---|------------------------------|
| 1. | Issue of charge-sheet, if required | 1. One month from the date of receipt of Commission's advice. 2. Two months from the date of receipt of investigation report. | DA |
| 2. | Time for submission of defence statement. | Ordinarily ten days or as specified in CDA Rules. | CO |
| 3. | Consideration of defence statement. | 15 (Fifteen) days. | DA |
| 4. | Issue of final orders in minor penalty cases. | Two months from the receipt of defence statement. | DA |
| 5. | Appointment of IO/PO in major penalty cases. | Immediately after receipt and consideration of defence statement. | DA |
| 6. | Conducting departmental inquiry and submission of report. | Six months from the date of appointment of IO/PO. | IA |
| 7. | Sending a copy of the IO's report to the CO for his representation. | (i) Within 15 days of receipt of IO's report if any of the Articles of charge has been held as proved. (ii) 15 days if all charges held as not proved. Reasons for disagreement with IO's findings to be communicated. | DA |
| 8. | Consideration of CO's representation and forwarding IO's report to the Commission for second stage advice. | One month from the date of receipt of representation. | CVO / DA |
| 9. | Issuance of orders on the Inquiry report. | (i) One month from the date of Commission's advice. (ii) Two months from the date of receipt of IO's report if Commission's advice was not required. | DA |
| 10. | Reconsideration of CVC second stage advice. | Two months of receipt of advice. | CVO / DA |



ACTS OF MIS-CONDUCT AS PER STANDING ORDERS AND CDA RULES
– AWARD OF PUNISHMENTS

| Acts of Mis-conduct | | Award of Punishments (Minimum / Higher / Highest) |
|---------------------|--|--|
| 1 | Willful insubordination or disobedience whether alone or in combination with others, to any lawful and reasonable order of his superior. | Stoppage of increment(s) without / with cumulative effect / demotion / dismissal. |
| 2 | Theft, Fraud, breach of trust or dishonesty in connection with the employer's business or property. | Stoppage of increment(s) with cumulative effect / demotion / dismissal (dismissal invariably in case of theft) |
| 3 | Willful damage to or loss of employer's goods or property or sabotage. | Demotion / dismissal. |
| 4 | Taking or giving bribes or any illegal gratification or indulging in any corrupt practice in connection with the employment or company's property. | Demotion / Dismissal. |
| 5 | Habitual late attendance. | Stoppage of increment(s) without / with cumulative effect / demotion. |
| 6 | Absence without leave for more than 10 days. | Stoppage of increment(s) with cumulative effect / demotion / dismissal (in habitual absence cases, except on medical grounds). |
| 7 | Habitual absence without leave. | Stoppage of increment(s) with cumulative effect / demotion / dismissal. |
| 8 | Breach of Standing Orders / Code of Conducts or Rules or any Law applicable to the Establishment. | Depending on gravity of offence. |
| 9 | Riotous or disorderly behaviour or any act subversive of discipline at the Establishment. | Stoppage of increment(s) with cumulative effect / demotion / dismissal. |
| 10 | Habitual negligence or neglect of work. | Stoppage of increment(s) with cumulative effect / suspension without pay up to 4 days / 10 days as the case may be / demotion. |
| 11 | Striking work or inciting others to strike work in contravention of the provisions of any law or rules having the force of law. | Stoppage of increment(s) with cumulative effect / demotion / dismissal. |

| | | |
|----|---|---|
| 12 | <p>Carrying concealed weapons, fighting,</p> <p>(a) Causing or attempting to cause bodily injury to another employee, drunkenness, bootlegging or threatening or intimidating any employee of the work</p> <p>(b) Conduct which violates the common decency or morality of the community.</p> | <p>Stoppage of increment(s) with cumulative effect / demotion / dismissal.</p> <p>Demotion / Dismissal.</p> |
| 13 | <p>(a) Slow down in performance of work.</p> <p>(b) Inciting others to resort to go slow policy or malingering.</p> | <p>Suspension without pay upto 4 days/ 10 days, as the case may be / demotion/dissmissal.</p> <p>Suspension without pay upto 4 days/ 10 days as the case may be / demotion.</p> |
| 14 | Engaging in private work or trade without permission | Warning / Stoppage of increment(s) without / with cumulative effect / suspension without pay upto 4 days / 10 days, as the case may be / demotion. |
| 15 | Displaying or distributing in the Factory premises handbills, pamphlets, placards, posters, banners, unauthorised badges etc., without prior written permission of the employer. | Warning / stoppage of increment(s) without / with cumulative effect / suspension without pay upto 4 days / 10 days as the case may be / demotion. |
| 16 | Attending or holding meetings within the Factory premises without the previous written permission of the employer. | Warning / stoppage of increment(s) without / with cumulative effect / suspension without pay upto 4 days / 10 days as the case be / demotion. |
| 17 | Disclosing to an unauthorised person or persons any confidential information in regard to work or any process used in the Company which comes into the possession of officer/workman during the course of his work. | Demotion / dismissal. |
| 18 | Canvassing for a Union or any association or party membership within the factory premises. | Warning / stoppage of increment(s) without / with cumulative effect / suspension without pay upto 4 days / 10 days as the case may be / demotion. |
| 19 | Gambling or money lending or doing any other private business within the Company's premises. | Stoppage of increment(s) without / with cumulative effect / suspension without pay upto 4 days / 10 days as the case may be / demotion. |
| 20 | Smoking within the Company's premises in places where it is prohibited. | Warning / Fine / Suspension without pay upto 4 days / 10 days as the case may be / demotion. |

| | | |
|----|--|---|
| 21 | Deliberately making false complaints against co-employees/supervisors, knowing them to be false. | Warning / stoppage of increment(s) without / with cumulative effect / suspension without pay upto 4 days / 10 days as the case may be / demotion. |
| 22 | Writing of anonymous or pseudonymous letters criticizing co-workers /supervisors of the Company and making false reports against employees. | Stoppage of increment(s) without / with cumulative effect / suspension without pay upto 4 days / 10 days as the case may be / demotion. |
| 23 | Refusal to accept or to take notice of any order or charge-sheet or any other communication served either in person or in due course by post or by notification in the Company's Notice Board. | Stoppage of increment(s) without / with cumulative effect / suspension without pay upto 4 days / 10 days as the case may be / demotion. |
| 24 | Refusal to accept transfer from one shift, dept., or workplace to another. | Warning / stoppage of increment(s) without / with cumulative effect / suspension without pay upto 4 days / 10 days as the case may be / demotion. |
| 25 | Deliberately making false statement before a superior or forging the signature of superior or that of any other person. | Stoppage of increment(s) with cumulative effect / demotion / dismissal. |
| 26 | Conviction by a court of law for any offence involving moral turpitude. | Dismissal. |
| 27 | Proxy punching / registering of attendance or abetting in the act of punching / registering attendance of another employee. | Suspension without pay upto 4 days / 10 days as the case may be / demotion / dismissal. |
| 28 | Picketing or making demonstrations within the factory premises / participation in illegal strike associated with violence. | Stoppage of increment(s) without / with cumulative effect / suspension without pay up to 4 days / 10 days as the case may be / demotion. |
| 29 | Violation of the terms and conditions of allotment of Company's Quarters or use of Company's Transport. | Warning / Fine / Stoppage of increment(s) without / with cumulative effect. |
| 30 | Indulging or participation in political activities within the Factory premises or becoming an office bearer of a Political Party. | Stoppage of increment(s) with cumulative effect / suspension without pay upto 4 days / 10 days as the case may be / demotion. |
| 31 | Impersonation. | Dismissal. |
| 32 | Entering and / or moving within the Factory premises. (a) Without identity card and / or badge on his person while on duty. (b) Without permission while on duty. | Warning / Fine. Stoppage of increment(s) without / with cumulative effect. |

| | | |
|----|--|--|
| 33 | Falsification of record and or defalcation | Demotion / Dismissal. |
| 34 | Willfully making false declaration regarding age, qualification & experience, in the application for appointment or when physical fitness examination record is being made or at any other time. | Demotion / dismissal. |
| 35 | Sleeping while on duty or being under the influence of alcoholic beverages / drugs while on duty. | Stoppage of increment(s) without/ with cumulative effect / suspension without pay upto 4 days / 10 days as the case may be / demotion. |
| 36 | Interference in work of other employee / workmen. | Warning / Suspension for 4 days / 10 days as the case may be. |
| 37 | Using or commercializing or alienating any invention, discovery or patent invented discovered or patented as the case may be in the course of employment under the Company for the benefit of himself or any other person, firm, company or corporation. | Stoppage of increment(s) without / with cumulative effect/ Demotion / Dismissal. |
| 38 | Applying to outside Organization for appointment / scholarships/fellowship etc., without permission of employer. | Stoppage of increment(s) without / with cumulative effect. |
| 39 | Spreading false rumors or giving false information which may bring into disrepute the Company or its employees, or spreading panic among the employees. | Stoppage of increment(s) with cumulative effect / demotion. |
| 40 | Collection of any money within the premises for purposes not sanctioned by the Management. | Warning / suspension for 4 days/ 10 days as the case may be. |
| 41 | Acceptance of gift from employees. | Stoppage of increment(s) without / with cumulative effect. |
| 42 | Unauthorised use of Company's quarters, land or other property. | Fine / stoppage of increment(s) without / with cumulative effect. |
| 43 | Handling any machine, vehicle equipment, apparatus etc., not entrusted to his charge. | Fine/ stoppage of increment(s) without/with cumulative effect/ demotion. |
| 44 | Falsifying or refusing to give testimony when any accident, misconduct or other matters are being investigated. | Stoppage of increment(s) without/with cumulative effect/ suspension without pay upto 4 days/ 10 days as the case may be/demotion. |

| | | |
|----|--|---|
| 45 | Non-return of Company's properties on or before the stipulated period if the value of the property is not proposed to be recovered from the wages. | Warning/stoppage of increment(s) without/with cumulative effect / suspension without pay upto 4 days / 10 days as the case may be / demotion. |
| 46 | Failure to wear prescribed Uniform, Coveralls, Safety, Clothing and equipment etc., while on duty failure to observe safety measures etc., | Warning/stoppage of increment(s) without/with cumulative effect / suspension without pay upto 4 days / 10 days as the case may be / demotion. |
| 47 | Leaving duty station operating in essential services etc., without informing superiors. | Stoppage of increment(s) without with cumulative effect / demotion. |
| 48 | Acts of sexual harassment as laid down by Supreme Court. | Stoppage of increment(s) with cumulative effect / demotion/dismissal. |
| 49 | Conduct in Private life, prejudicial to the reputation of the Company. | Stoppage of increment(s) with cumulative effect / demotion. |
| 50 | Bigamous marriage without permission where permitted under law/ such marriage where not permitted under law. | Demotion/dismissal |
| 51 | Breach of duty and obligations during working hours under the relevant Standing Orders. | Postponement of increment(s) with cumulative effect. |
| 52 | Habitual indebtedness/insolvency. | Postponement of increment(s) without/with cumulative effect/demotion. |

OTHER MISCONDUCT UNDER CDA RULES WHICH DO NOT FALL IN ANY OF THE ABOVE CATEGORIES

| | | |
|----|---|--|
| 53 | Making representation / grievance / Petitions to VIPs / VIPs except through proper channel. | Postponement of increment(s) with/without cumulative effect. |
| 54 | Possession of pecuniary resources or property disproportionate to the known source of income. | Stoppage of increment(s) with cumulative effect/Demotion/Dismissal. |
| 55 | Acting in a manner prejudicial to the interests of the Company. | Stoppage of increment(s) with/without cumulative effect/Demotion. |
| 56 | Commission of any act subversive of Discipline or of good behaviour. | Stoppage of increment(s) with/without cumulative effect/reduction in pay/demotion. |
| 57 | Acts which are unbecoming of an officer or acts which may bring disrepute to the Company. | Stoppage of increment(s) with / without cumulative effect / reduction in pay / demotion. |

HINDUSTAN AERONAUTICS LTD
Corporate Office

OFFICE OF THE
EXECUTIVE DIRECTOR
(VIGILANCE)

No.HAL/CO/VIG/47/99/546

20 March 1999

Sub: - Monitoring of Vigilance Related Departmental Enquiries

1. It has been noticed that disciplinary cases particularly pertaining to Vigilance are not receiving due attention of the Enquiry Officers and Disciplinary authorities as a result, quite a few cases have exceeded the time limit given in Chairman's letter issued vide No.HAL/P&A/19(5)/97/1753 dated 16.12.97.

2. A review of pending Vigilance cases was undertaken by the Chairman and he has shown great concern in long pending cases. While there are 12 cases pending with the Disciplinary Authority for issue of final orders as many as 12 cases are pending with Enquiry Officers ranging from 6 months to over two and half years. Analysis conducted into the time taken (copy of the analysis is given at Annexure-I) to finalise an enquiry indicates that there is an urgent need by all concerned to ensure on the one hand that delinquent employee is not kept on tenterhooks, which affect his morale and efficiency and the delay in awarding the punishment if so proved. A greater emphasis is now being given by Ministry and CVC to handle vigilance case expeditiously as per CVC's directive not more than adjournments are now permitted and the adjournment time is counted in overall time frame given for conduct of enquiry. Instructions received from CVC are enclosed herewith at Annexure-II.

3. As a sequel to the review it has been decided to lay down time frame for each stage of handling departmental enquiry proceedings so that these are conducted in a time-bound manner. Time schedule for conducting departmental enquiry proceedings in HAL is given at Annexure-III for compliance and strict adherence.

4. To monitor progress of Vigilance cases and to file an up to date report with the Ministry and CVC, it has been decided to institute a monthly report on the subject, a format for the filling the report is enclosed at Annexure-IV. The report will be prepared by P&A of each Division, if necessary in consultation with the Vigilance Dept and sent as under so as to reach this office by 25th of the month :-

- (a) Executive Director (Vigilance), Corporate Office
- (b) General Manager (P&A), Corporate Office
- (c) Head of the Vigilance Department, of the concerned Complex/Division.

5. If there is no Vigilance case pending during the month, a NIL report in a simple letter will also be filed by due date by each Division.
6. The contents of this letter may be put up to MD/GMs for their perusal and also brought to the notice of Enquiry Officers whenever detailed for enquiry.

Sd/-

(Sanjeev Sahi)
Executive Director (Vigilance)

Distribution:- all P&A Heads of all Divisions/Complexes.

Annexure-I of Appendix 'R'

Time taken at various stages of Enquiries

| | | | |
|----|--|---|----------|
| a) | Average time taken between submission of PE / Investigation report and issue of charge sheet | - | 30 days |
| b) | Time taken for Appointment of Enquiry Officer from date of issue of charge sheet | - | 75 days |
| c) | Time taken for conduct of Enquiry by Enquiry Officers in normal case | - | 240 days |
| d) | Pending with Enquiry Officer | - | 240 days |
| e) | Pending with Disciplinary Authority | - | 180 days |

EXTRACT FROM CVC's Letter No 8(1)/98(1) dated 18.11.98

2.3 Speedy departmental enquiries.

2.3.1 One major source of corruption is that the guilty are not punished adequately and more important they are not punished promptly. This is because of the prolonged delays in the departmental enquiry procedures. One of the reasons for the departmental enquiry being delayed is that the enquiry officers have already got their regular burden of work and this enquiry is to be done in addition to their normal work. The same is true for the Presenting Officer also.

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

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

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

(ii) The Oral enquiry, including the submission of the Enquiry Officer's report should be completed within a period of 6 months from the date of appointment of the Enquiry Officer. In the preliminary inquiry in the beginning requiring the first appearance of the charged officers and the Presenting Officer, the Enquiry Officer should lay down a definite time bound programme for inspection of the listed documents, submission of the lists of defence documents and defence witnesses and inspection of defence documents before the regular hearing is taken up. The regular hearing once started, should be conducted on day-to-day basis until completed and adjournment should not be granted on frivolous grounds.

2.3.4 One of the causes for delay is repeated adjournments. Not more than two adjournments should be given in any case so that the time limit of six months for departmental enquiry can be observed.

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

TIME SCHEDULE FOR CONDUCTING DEPARTMENTAL INQUIRIES

1. In line with the CVC's instructions now being enclosed, following time bound conduct of inquiry will be ensured so that inquiry report including Oral Inquiry is completed and submitted within 6 months:-

Upto a maximum of

- | | | | |
|----|--|---|----------|
| a) | Period of preparation and issue of charge sheet on receipt of PE / Investigation Report | - | 5 Days |
| b) | Time for submission of explanation by the delinquent employee to the Disciplinary Authority | - | 10 days |
| c) | Time for appointment Inquiry Officer | - | 7 Days |
| d) | Time bound programme for Inspection of the listed documents, submission of the lists of defence documents, defence witness and inspection of defence documents by the IO before regular hearing is taken up. | - | 7 Days |
| e) | Period of actual conduct of Inquiry (simple cases) by the Inquiry Officer. Inquiry to be completed on day to day basis (also refer para-2 below) | - | 2 months |
| f) | Period of actual conduct of Inquiry (when voluminous Evidence is required to be adduced by the Inquiry Officer. Inquiry to be conducted day to day basis (also refer Para-2 below) | - | 4 months |
| g) | Period of submission of Inquiry Report duly completed by the Inquiry Officer to Disciplinary Authority | - | 10 days |
| h) | Time to be given for second / final explanation of delinquent employee | - | 7 days |
| i) | Time for consideration and issue of final order by Disciplinary Authority. | - | 10 days |

PENDENCY OF INVESTIGATION

| SI No | Division/ Complex | Case ' Complaint No/ Case in brief | Date of Allotment of Case No. / Complaint No. | Due Date for submission of investigation report to Corporate Vigilance (Indicate Original Date ' Extensions, if any) | Current Status (Please indicate likely date of submission of report if applicable) | Date of submission of report to the DA | Remarks |
|--|-------------------|------------------------------------|---|--|--|--|---------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| <u>LESS THAN THREE MONTHS</u> | | | | | | | |
| | | | | | | | |
| <u>THREE MONTHS TO SIX MONTHS</u> | | | | | | | |
| | | | | | | | |
| <u>MORE THAN SIX MONTHS</u> | | | | | | | |
| | | | | | | | |

PART-B

PENDING WITH DA FOR ISSUANCE OF CHARGE SHEET

| SI No | Division/ Complex | Case No / Complaint No | Date of submission of report to DA | Name ' Designation of the DA | Details of the Case | Name ' Design of CSW/CSO | Date of receipt of draft charge sheet for vetting | Date of vetted charge sheet sent to DA | Reasons for delay in issuance of charge sheet, if applicable | Present Status |
|--------------------------------------|-------------------|------------------------|------------------------------------|------------------------------|---------------------|--------------------------|---|--|--|----------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| <u>LESS THAN THREE MONTHS</u> | | | | | | | | | | |
| | | | | | | | | | | |
| <u>MORE THAN THREE MONTHS</u> | | | | | | | | | | |
| | | | | | | | | | | |

PART-C

PENDING DISCIPLINARY PROCEEDINGS

| SI No | Division / Complex | Name & Designation of CSW/CSO | Case Name | Date of Issuance of Charge Sheet | Date of submission of explanation by CSO/CSW | Name & Design DA | Date of constitution of DEC | Name & Design of EO | Due date for submission of Enquiry Report to DA (As per CVC guidelines 180 days) | Present Status (Indicate No. of Sittings held) |
|--------------------------------------|--------------------|-------------------------------|-----------|----------------------------------|--|------------------|-----------------------------|---------------------|--|--|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| <u>LESS THAN SIX MONTHS</u> | | | | | | | | | | |
| | | | | | | | | | | |
| <u>SIX MONTHS TO ONE YEAR</u> | | | | | | | | | | |
| | | | | | | | | | | |
| <u>MORE THAN ONE YEAR</u> | | | | | | | | | | |
| | | | | | | | | | | |

PART-D

PENDING WITH DA FOR ISSUANCE OF FINAL ORDER

| SI No | Division/ Complex | Name and Designation of CSW/CSO | Case Name | Date of issuance of Charge Sheet | Date of submission of EO's Report | Date of Vigilance Vetting of EO's report | Date of issuance of Final Order by DA | Punishment Awarded | Present Status |
|-------|-------------------|---------------------------------|-----------|----------------------------------|-----------------------------------|--|---------------------------------------|--------------------|----------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| | | | | | | | | | |
| | | | | | | | | | |

Relevant provisions from different Acts

Some working definitions under Indian Penal Code 1872

1. **Wrongful gain (Sec 23):** Wrongful gain is gain by unlawful means of property to which the person gaining is not legally entitled.
2. **Wrongful loss (Sec 23):** Wrongful loss is the loss by unlawful means of property to which the person losing it is legally entitled.
3. **Gaining wrongfully, Losing wrongfully (Sec 23):** A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.
4. **Dishonestly (Sec 24):** Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing "dishonestly".
5. **Fraudulently (Sec 25):** A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.
6. **Forgery (Sec 463):** Whoever makes any false document or part of a document, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to tender into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.
7. **Making a false document (Sec 464):** A person is said to make a false document-

First- who dishonestly or fraudulently makes, signs, seals, or executes a document or part of a document or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

Secondly- who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or

executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or who, dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or the nature of the alteration.

Thirdly- Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic or to affix his digital signature on any electronic record knowing that such persons by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

8. **Criminal breach of trust(Sec 405)** : Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".
9. **Cheating(Sec 415)** : Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he was not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".
10. **Cheating by personation (Sec 416)**: A person is said to cheat by personation, if he cheats by pretending to be some other person or by knowingly substituting one person, for another, or representing that he or any other person is a person other than he or such other person really is.
11. **Theft (Sec 378)**: Whoever intending to take dishonestly any moveable property out of the possession of any person without that person's consent moves that property in order to such taking is said to commit theft.
12. **Criminal force (Sec 350)**: Whoever intentionally uses force to any person without that person's consent, in order to the committing of any offence or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.
13. **Assault(Sec 351)**: Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.
14. **Falsification of accounts(Sec 477A)**: Whoever, being a clerk, Officer or servant, or employed or acting in the capacity of a clerk, Officer or servant, willfully and with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer or willfully, and with intent to defraud,

makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, paper writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years or with fine or with both.

15. **Defamation (Sec 499)** : Whoever by words either spoken or intended to be read or by signs or by visible representations makes, or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person, is said, except in the case hereinafter excepted, to defame that person.

Explanation 1: It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person, if living and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2: It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3: An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4: No imputation is said to harm a person's reputation, unless that imputation directly or indirectly in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally Considered as disgraceful.

Relevant Portions from the Evidence Act, 1872

1. **Fact: - "Fact" means and includes-**
 - a) anything, state of things, or relation of things capable of being perceived by the senses;
 - b) any mental condition of which any person is conscious.

2. **Relevant:-** One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

3. **Fact of issue :-** The expression "facts in issue" means and includes any fact from which, either by itself or in connection with other facts, the existence, nonexistence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

4. **Document:-** "Document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means intended to be used, or which may be used, for the purpose of recording the matter.

5. **Evidence: -** "Evidence" means and includes-
 - a) all statements which the Court permits or requires to be made before it by witness, in relation to matters of fact under Enquiry; such statements are called oral evidence;
 - b) all documents produced for the inspection of the Court; such documents are called documentary evidence.

6. **Proved: -** A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

7. **Disproved: -**A fact is said to be disproved when, after considering the matters before it, the court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

8. **Not proved: -** A fact is said not to be proved when it is neither proved nor disproved.

Oral evidence

9. **Proof of facts by oral evidence:** - All facts, except the contents of documents, may be proved by oral evidence.
10. **Oral evidence must be direct:-** Oral evidence must, in all cases whatever, be direct; that is to say if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it; if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it; if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner; If it refers to an opinion or to the grounds on which that opinion is held it must be the evidence of the person who holds that opinion on those grounds.

Documentary Evidence

11. **Proof of contents of documents:** The contents of documents may be proved either by primary or by secondary evidence.
12. **Primary evidence:** Primary evidence means the document itself produced for inspection of the Court.
13. **Secondary evidence:** Secondary evidence means and includes-
 - a) Certified copies given under the provisions hereafter contained;
 - b) Copies made from the original by mechanical process which in themselves insure the accuracy of the copy, and copies compared with such copies;
 - c) Copies made from or compared with the original;
 - d) Counterparts of documents as against the parties who did not execute them;
 - e) Oral accounts of the contents of a document given by some person who has himself seen it.
14. **Burden of proof."** Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.
15. **On whom burden of proof lies:** The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side or Witness:
16. **Who may testify:** All person shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers- to those questions, by tender years, extreme old age, disease, weathered body or mind, or any other cause of the same kind.

Explanation: A lunatic is not incompetent to testify unless he is prevented by his liganacy from understanding the questions put him and giving rational answers to them.

17. **Number of witnesses:** No particular number of witnesses shall in any case be required for the proof of any fact.

Note: A witness is neither an accomplice nor anything analogous to an accomplice but an ordinary witness. As a general rule, court may act upon the testimony of such solitary witness without corroboration or Examination of Witnesses.
18. **Examination-in-chief:** The examination of a witness by the party who calls him shall be called his examination-in-chief.
19. **Cross-examination:** The examination of a witness by the adverse party shall be called his cross-examination.
20. **Re-examination:** The examination of a witness, subsequent to the cross-examination by the party who called him shall be called his re-examination.
21. **Order of examination:** Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined. **Cross Examination** need not be confined to the facts to which the witness testified on his examination- in-chief.
22. **Direction of re-examination:** The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced re-examine upon the matter.
23. **Cross-examination of person called to produce a document:** A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.
24. **Witness to character:** Witnesses to character may be cross-examined and re-examined.
25. **Leading questions:** Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.
26. **When they must not be asked:** Leading questions must not, if objected to by the adverse party, be asked in examination-in-chief, or in a re-examination, except with the permission of the Court.
27. The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.
28. **When they may be asked:** Leading questions may be asked in cross- examination.
29. **When witness may use copy of document to refresh Memory:** Whenever a witness may refresh his memory by referring to any document, he may, with the permission of the Court, refer lo a copy of such document. Provided the Court be satisfied that there is sufficient reason for the production of the original. An expert may refresh his memory by reference to professional treaties.

30. **Questions lawful in cross-examination:** When a witness is cross-examined, he may, in addition to the questions here in before referred to, be asked any questions which tend-

- a) to test his veracity,
- b) to discover who he is and what is his position in life, or
- c) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

Relevant Portions from the Prevention of Corruption Act, 1988

Sec 2 (c) “**Public Servant**” means

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

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

Explanation.—

- (a) “**Expecting to be a public servant**”.—If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.
- (b) “**Gratification**”.—The word “gratification” is not restricted to pecuniary gratification or to gratifications estimable in money.
- (c) “**Legal remuneration**”.—The words “legal remuneration” are not restricted to remunerations which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the Organisation, which he serves, to accept.
- (d) “**A motive or reward for doing**”.—A person who receives a gratification as motive or reward for doing what he does not intend or is not in a position to do, or has not one, comes within this expression;
- (e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

Sec 13. Criminal misconduct by a public servant.—(1) A public servant is said to commit the offence of criminal misconduct,—

- (a) If he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7; or
- (b) If he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any, person whom he knows to be interests in or related to the person so concerned; or
- (c) If he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or
- (d) If he,—
 - (i) By corrupt or illegal means, obtains for himself or for any other person any valuable thing or Pecuniary advantage; or
 - (ii) By abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
 - (iii) While holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or
- (e) If he or any person on his behalf, is in possession or has, at any time during the Period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.—For the purposes of this section “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance, With the provisions of any law, rules or orders for the time being applicable to public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

19. Previous sanction necessary for prosecution.—

(1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—

(a) In the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) In the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

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

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973—

(a) No finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission, irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has, in fact, been occasioned thereby;

(b) No court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) No court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—for the purposes of this section,—

(a) Error includes competency of the authority to grant sanction;

(b) A sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

Appendix 'T'
(Refers to Chapter – VIII, Para – 8.10)

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