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## CHAPTER I ORGANISATION

### 1. General:

The existing organization responsible for the implementation of anti-corruption measures of the Himachal Pradesh Government and maintenance of integrity in the services are—

- (i) Vigilance Department of Himachal Pradesh Government;
- (ii) Vigilance Units in Departments and in the offices of the Deputy Commissioners.

### 2. Vigilance Department and the Scheme of Vigilance :

The Vigilance Department was created in 1965 and scheme for vigilance and anti-corruption work in Himachal Pradesh Administration was also drawn in 1965.

Consequent upon the attainment of Statehood, the scheme for vigilance and anti-Corruption for the State of Himachal Pradesh was revised and it was circulated to all departments vide Department of Personnel (Vigilance) letter No. 6-1/71-Vig., dated 27<sup>th</sup> December, 1971. The main features of the present scheme of vigilance are—

- (1) A State Vigilance Committee headed by the Chief Minister.
- (2) Vigilance Department in the State.
- (3) Ex-officio Vigilance Officers in Administrative Departments.

### 3. The State Vigilance Committee:

3.1 Under the Scheme a State Vigilance Committee has been constituted consisting of the following:-

- |    |                             |    |    |    |                   |
|----|-----------------------------|----|----|----|-------------------|
| 1. | Chief Minister              | .. | .. | .. | Chairman          |
| 2. | Chief Secretary             | .. | .. | .. | Member            |
| 3. | Judicial Secretary          | .. | .. | .. | Member            |
| 4. | Inspector General of Police | .. | .. | .. | Member            |
| 5. | Director of Vigilance       | .. | .. | .. | Member-Secretary. |

3.2 **Functions-** The functions of this Committee are-

- (a) The Committee shall review the progress of vigilance and anti-corruption work in the State of Himachal Pradesh periodically and for this purpose it may hold meeting at least twice a year or more often, in necessary.
- (b) The Committee may arrange for a study in each department of various forms and modes of corruption and the points and places where it is widely prevalent.
- (c) The Committee may make and consider suggestions for changes in rules and procedure; with a view to plugging loopholes in the effort to eradicate corruption.
- (d) The Committee may consider and suggest changes of officers having a bad reputation or a shady conduct or may suggest such other action against such officers as may be possible and desirable.
- (e) The Committee may suggest enquiries or investigations into any specific case coming to its notice containing allegation of corruption.
- (f) The Committee may make such suggestions as it may consider necessary for carrying out the work of vigilance and anti-corruption in the State effectively and efficiently, in the light of the public reaction to the anti-corruption drive and as a result of the review of vigilance and anti-corruption work in the meeting.

### 4. The Vigilance Department at the State Headquarters and its functions:

4.1 The Vigilance Department in the State has following wings:-

- (1) Secretariat Wing.
- (2) Investigating Wing (A.C.U.).
- (3) Inquiring Wing.
- (4) Prosecuting Wing.

#### **4.2. Secretariat Wing:**

**4.2.1** The Secretariat Wing is headed by the Chief Secretary as the Secretary (Vigilance) and the Chief Minister as the Minister-in-charge.

**4.2.2.** The Director of Vigilance also functions as ex-officio Joint Secretary (Vigilance)/Deputy Secretary (Vigilance) and submits vigilance cases to the Chief Secretary and to the Chief Minister, in accordance with the Rules of Business and the Standing Orders, issued there under from time to time. The Director of Vigilance is overall in-charge of the vigilance work in the State.

**4.2.3.** To assist the Director of Vigilance, there is a whole-time Vigilance Officer and, in addition, the Assistant Director, Administrative Reforms Unit, also functions as second Vigilance Officer in a addition to his own duties.

#### **4.3. Investigating Wing;**

**4.3.1.** There is an Investigating Wing known as Anti-Corruption Unit in the State Vigilance Department. The Superintendent of Police (Vigilance) is the in-charge of his Unit with headquarters at Simla and works directly under the Director of Vigilance, but the day to day administration of the Anti-Corruption Unit is looked after by the Superintendent of Police (Vigilance). The Superintendent of Police is assisted by three Deputy Superintendents of Police, one each for three Zones with ancillary staff. For anti-corruption work, the State of Himachal Pradesh has been divided into the following three zones:--

1. South Zone ..Districts of Simla, Solan, Kinnaur and Sirmur with headquarters at Simla.
2. Central Zone ..Districts of Mandi, Bilaspur, Kulu and Lahaul and Spiti with headquarters at Mandi.
3. Western Zone ..Districts of Kangra, Hamirpur, Una and Chamba with headquarters at Dharamsala.

Each Zone has been put under a Deputy Superintendent of Police. At each District head, quarters there is either an Inspector or a Sub-Inspector as in-charge of the anti-corruption work.

**4.3.2.** The offices of the Deputy Superintendents of Police, Anti-Corruption Unit, at Shimla, Mandi and Dharamsala have been declared as Police Stations for their respective jurisdictions for the purpose of registration and investigation of cases under section 5 of the Prevention of Corruption Act, 1947.

**4.3.3.** Duties,- The Superintendent of Police (Vigilance), in-charge of the Anti-Corruption Unit is a supervisory officer and he has to tour adequately to ensure that the anti-corruption staff is working properly. In addition, the Superintendent of Police (Vigilance) personally undertakes enquiries into complaints/investigation into cases against very senior officers/Heads of Departments of the Government and also against gazette officers stationed at the State headquarters at the discretion of the Government. The Superintendent of Police (Vigilance) has also to ensure prompt investigation into cases/complaints and for that purpose he submits quarterly report to the Director of Vigilance showing the progress of the cases pending with the Anti-Corruption Unit.

The Deputy Superintendents of Police (Vigilance) have to move constantly in their Zones to ensure that the Inspector and Sub-Inspectors at District headquarters are working properly and to supervise investigations in their Zones. The Deputy Superintendents of Police (Vigilance) are also required to undertake enquiries into cases against all gazette officers in their respective Zones and into some important cases against non-gazetted officials at the discretion of the Government.

The Inspectors and Sub-Inspectors investigate cases and collect information about corruption in their districts.

**4.3.4.** Procedure for taking up inquiries by the Anti-Corruption Unit. The Anti-Corruption Unit takes up cases/complaints for enquiry/investigation both against gazette officers and non-gazetted officials in accordance with the instructions and orders issued from time to time by the Vigilance Department in this behalf. However, the State Government may entrust any particular case or enquiry to C.B.I. by using its discretion under section 6 of S.P.E. Act.

**4.3.5.** The procedure for taking up enquiries and investigation is broadly as under:-

- (a) In case of non-gazetted officials enquiries may be started and regular cases may be registered by the Anti-Corruption Unit, under orders of the Superintendent of Police (Vigilance) who will also inform the

Vigilance Department immediately, as soon as the enquiry is taken up or the case is registered. For this purpose the Inspectors in the Zones will collect information about cases of corruption/complaints and may forward the same with their recommendations directly to the Superintendent of Police (Vigilance), with the copies to Deputy Superintendent of Police in-charge of their Zones.

- (b) All complaints/source reports against gazette officers received by the Anti-Corruption Unit are required to be forwarded to the Director of Vigilance for obtaining orders of the action to be taken on them.
- (c) Complaints received in the Vigilance Department against gazette and non-gazetted officers are entrusted to the A.C.U. for preliminary enquiry or regular investigation. Certain complaints are given to the Administrative Departments for preliminary enquiry by a departmental officer.
- (d) The Heads of Departments are taken into confidence in respect of all cases against gazette and non-gazetted officers as soon as enquiries are registered either for preliminary enquiry or for regular investigation.

**4.3.6.** Intelligence Unit,-There is an Intelligence Unit with one Deputy Superintendent of Police, one Inspector, one Sub-Intelligence Unit with one Deputy Superintendent of Police, one Inspector, one Sub-Inspector and one Head Constable, headed by the Superintendent of Police (Vigilance), which collects information/intelligence about corrupt practices in the departments and important corruption cases. It also collects information about officers/officials having a bad reputation and dubious conduct.

#### **4.4. Inquiring Wing!**

**4.4.1.** The Enquiry Wing of the State Vigilance Department consists of two officers namely the Commissioner for Departmental Enquiries and the Director of Departmental Inquiries. These officers conduct oral enquiries under C.C..S. (C.C. & A.) Rules, 1965 against gazette and non-gazetted officers. These Inquiry Officers may also be entrusted with oral enquiries under other disciplinary rules e.g. under A.I.S. (Discipline and Appeal) Rules, 1969.

**4.4.2.** Commissioner for Departmental Enquiries. The Commissioner for Departmental Enquiries conducts oral inquiries in vigilance cases against gazette officers. In addition, he may be entrusted with miscellaneous inquiries, at the discretion of the Government. One Public Prosecutor has been permanently attached to the Commissioner for Departmental Enquiries to present cases before the latter on behalf of the disciplinary authority.

**4.4.3** Director of Departmental Inquiries-The Director of Departmental Inquiries conducts enquiries against non-gazetted officers and against gazetted officers when specially ordered by the Government to do so. One Assistant Public Prosecutor has permanently attached to the Director of Departmental Inquiries for conducting cases before the latter.

**4.4.4** Under the Himachal Pradesh Enquiries (Powers) Act, 1973, these Enquiry Officers are competent to exercise the same powers for summoning of witnesses and for compelling production of documents as are exercisable by a Commissioner appointed for an enquiry under the Public Servants (Inquiries) Act, 1850, and all persons dis-obeying any process issued by such officer in this behalf are liable to the same penalties as if the same had issued from a Court.

**4.4.5** Procedure to be followed after report is submitted by Commissioner for Departmental Enquiries and Director of Departmental Inquiries.-After completion of the oral enquiries both the commissioner for Departmental Enquiries and the Director of Departmental Inquiries are required to submit their findings in respect of each case to the Department of Vigilance. The Vigilance Department then processes the case further and advises the Administrative Departmental as to the course of further action to be taken in the matter. If the Administrative Department does not agree with the recommendation of the Vigilance Department then it has to refer the case back for reconsideration of the latter. The case has then to be decided according to the procedure laid down in para 7 of this Chapter.

#### **4.5 Prosecuting Wing!**

**4.5.1.** The Prosecuting Wing of the Vigilance Department is primarily meant for conducting cases investigated by Anti-Corruption Unit in the Courts and presenting cases on behalf of the disciplinary authority in oral enquiries to be conducted by the Commissioner for Departmental Enquiries and the Director of Departmental Inquiries. For conducting cases in the Courts, one Public Prosecutor has been posted in each Zone. For presenting cases in oral enquiries, one Public Prosecutor is attached to the Commissioner for Departmental Enquiries and one Assistant Public Prosecutor is attached to Director of Departmental Inquiries.

**4.5.2.** The Public Prosecutor of each zone conducts all cases of his Zone which are investigated by Anti-Corruption Unit. He also advises the investigating officers of his zone, regarding proper investigation of cases. Challans are

scrutinized by the Public Prosecutor before the same are put up in Court of Law. He also helps the Investigating Officers in fact finding enquiries and scrutinizes the articles of charges etc. prepared by the Investigating Officers to be served on the delinquent. The Public Prosecutor of each Zone is required to send progress of each hearing of a case pending in a court of law for prosecution to the Director of Vigilance and to the Administrative Department concerned on prescribed Performa. He is also required to send a quarterly report showing the progress of cases pending in courts to the Director of Vigilance.

**4.5.3.** The Public Prosecutor attached with the Commissioner for Departmental Enquiries is required to be appointed as Presenting Officer by the disciplinary authority in all cases where oral enquiry is to be conducted by the Commissioner for Departmental Enquiries. The Assistant Public Prosecutor attached to the Director of Departmental Enquiries is required to be appointed as Presenting Officer by the disciplinary authority in all cases where oral enquiry is to be conducted by Director of Departmental Enquiries. The two officers are required to send quarterly returns to the Director of Vigilance showing the progress of cases before the Inquire Officers. They are also required to inform the Director of Vigilance and the disciplinary authority the progress made immediately after each hearing. Non-cooperation of the administrative Departments regarding supply of records etc. may be brought to the notice of the Director of Vigilance so that the matter is taken by the latter with the Head of the Department concerned. The Public Prosecutor and the Assistant Public Prosecutor are required to approve the charge sheet etc. in cases where the Vigilance Department has advised Administrative Department to start regular departmental action.

## **5. Functions of Heads of Departments and ex-officio Vigilance Officers of the Departments:**

**5.1.** The responsibility for rooting out corruption in the departments rests squarely with the Heads of Departments and necessary assistance and guidance in this connection is provided to them by the Vigilance Department. To maintain proper liaison between an Administrative Department and the Vigilance Department. And the Vigilance Department, the scheme provides for the appointment of an officer at the headquarters as an officer at the headquarters as an ex-officio Vigilance Officer of the department. The appointment of an ex-officio Vigilance Officer is required to be made with the prior concurrence of the Vigilance Departments. The integrity of an ex-officio Vigilance Officer should be unquestionable. The scheme also provides for appointment of ex-officio Vigilance Officers at the district headquarters. Normally General Assistant to the Deputy Commissioner can be appointed as the ex-officio Vigilance Officer. But the Deputy Commissioner can appoint any other as the ex-officio Vigilance Officer with the approval of the Vigilance Department.

**5.2.** For the purpose of keeping the Government informed about the latest position of all the vigilance cases/complaints, the Heads of Departments are required to submit the following periodical returns to the Director of Vigilance in the prescribed proforma:-

- (a) Quarterly return of all complaints and vigilance cases both against gazetted and non-gazetted employees (Form V-1 and V-2).
- (b) Quarterly return of cases pending in courts both against gazetted and non-gazetted employees (Form V-4).
- (c) Quarterly return of public servants under suspension (Form V-5).
- (d) Progress report on all Vigilance cases both against gazetted and non-gazetted employees six-monthly to be submitted to the Chief Minister (Form V-3).

The quarterly returns are required to be sent to the Vigilance Department by 15<sup>th</sup> of the month in which they are due and half yearly returns are required to be sent by the end of the month in which they are due.

**5.3.** Heads of Departments shall forward all complaints/source report/audit inspection reports of vigilance angle, against all Government servants, received in the departments to the Vigilance Department for obtaining orders before initiating any action on them.

**5.4.** The Heads of Departments are required to review the progress made in all vigilance cases/complaints once in every quarter, It is expected of them to point out delays in finalisation of cases to the Vigilance Department.

**5.5.** The ex-officio Vigilance Officers in the departments are required to give necessary assistance to the Heads of Departments in the performance of their following important duties:-

- (i) Preventive action by way of--
  - (a) plugging loopholes for corruption in various departmental rules and regulations: and
  - (b) compulsory retirement, transfer to a post of lesser responsibility etc. of officers against whom there is sufficient material to justify the belief that their integrity is doubtful.
- (ii) Ensuring that all complaints relating to corruption are looked into promptly by an appropriate agency.

- (iii) Ensuring compliance with the code of conduct for their officers.
- (iv) Ensuring compliance with other directives of the Government regarding vigilance cases.
- (v) Careful scrutiny of properly returns of their subordinates and entrusting cases where assets seem to be disproportionate, to the Anti-Corruption Unit through the Vigilance Department.
- (vi) Ensuring that departmental enquiries are completed expeditiously and punishments are adequate.

**5.6.** The ex-officio Vigilance Officers are also required to maintain liaison with the Anti-Corruption Unit and help it in-

- (i) getting records required in connection with the investigation of cases;
- (ii) getting the required technical assistance wherever necessary; and
- (iii) getting the administrative difficulties experienced by the staff of the Anti-Corruption Unit, removed.

**5.7.** The ex-officio Vigilance Officers will also ensure expeditious completion of enquiries/investigations into the complaints by the Anti-Corruption Unit.

**5.8.** The ex-officio Vigilance Officers are also required to maintain liaison with the Presenting Officers attached with the two Enquiry Officers. They are also required to help the Presenting Officers in supplying records, technical know-how etc. They are also supposed to get the processes which are issued by the two Inquiry Officers served on those witnesses who are employed in their departments.

#### **6. Procedure regarding consultation with Vigilance Department:**

**6.1.** The stages at which the Vigilance Department is required to be consulted by the Administrative Department regarding the disposal of vigilance cases/vigilance complaints are given in following paras.

**6.2.** At complaint stage.- all complaints/audit inspections/departmental inspections/source reports containing allegations of corruption, embezzlement or improper motive against certain official received by the Administrative departments are required to be forwarded to the Vigilance Department for its advice. The Vigilance Department after examination of the case then decides whether to entrust the complaint/audit inspection/departmental inspection/source report to the Anti-Corruption Unit or to the department concerned for a fact finding enquiry. However, all anonymous and pseudonymous complaints are required to be filed by the departments without taking any action on them.

#### **6.3. After the fact finding enquiry:**

**6.3.1** In cases where the fact finding enquiry is entrusted to the Administrative Department, the enquiry report has to be forwarded to the Vigilance Department for advice as to the further course of action to be taken on the enquiry report.

**6.3.2.** Where the enquiries are entrusted to the Anti-Corruption Unit by the Vigilance Department, the enquiry report is sent by the Anti-Corruption Unit to the Vigilance Department. The Vigilance Department then advises the Administrative Department as to the further course of action to be taken.

**6.3.3.** In cases where the Vigilance Department has advised for institution of departmental proceedings for imposition of a major penalty then the oral enquiry is required to be entrusted to the Commissioner for Departmental Enquiries in respect of gazetted officers and to the Director of Department Inquiries in respect of non-gazetted officers. In cases where the Vigilance Department has advised for institution of departmental proceedings for imposition of a minor penalty and if the disciplinary authority proceeds under rule 16(1) (b) of C.C.A. rules then in that case also the oral enquiry will be entrusted to Commissioner for departmental Enquiries or director for Departmental Inquires, as the case may be. However, if special circumstances so justify, it is open to the Administrative Department to approach the Vigilance Department for entrusting the oral enquiry to one of the departmental officers. The Vigilance Department would consider the request of Administrative Department and give its final advice which is required to be accepted by the Administrative Department.

**6.3.4.** In cases in which the preliminary enquiries are conducted by the Anti-Corruption Unit, if a prima facie criminal offence is made out, the Anti-Corruption Unit registers the case for regular investigation in consultation with the Vigilance Department.

**6.4** After completion of regular investigation.- In cases in which regular investigation discloses that sufficient material by way of oral or documentary evidence is not available to put up the case for trial in a court of law, the A.C.U. is

required to forward the case file to the Vigilance Department for examining the desirability of instituting departmental proceedings against the delinquent officer. In such cases the Vigilance Department would then advise the Administrative Department as to the further course of action to be taken.

**6.5.** After completion of the oral enquiry. – The oral enquiry reports are required to be sent to the Vigilance Department by the enquiring authorities and the Vigilance Department as to the further course of action to be taken.

**7 Procedure in case of difference of opinion between the Vigilance Department and Administrative Departments:**

If at any stage there is a difference of opinion between the Vigilance Department and an Administrative Department, regarding the implementation of the advice given by the former in any vigilance case, the latter may record in writing the reasons for its inability to accept the advice so tendered and return the case for reconsideration of the former. If, on re-consideration, the Vigilance Department still adheres to its original views, its advices will be acted upon by the Administrative Department or else the latter may submit the matter for the consideration of the Council of Ministers, with the prior approval of the Chief Minister.

**8 The powers and jurisdiction of the Vigilance Department:**

The Vigilance Department can have an enquiry made into (a) any transaction in which a public servant is suspected or alleged to have acted for an improper purpose or in a corrupt manner, (b) into any complaint that a public servant had exercised or refrained from exercising his powers with an improper or corrupt motive and (c) into any complaint of misconduct or lack of integrity or of any malpractices or mis-demeanour on the part of a public servant.

**9 Extension of power and jurisdiction of the Vigilance Department to Public Sector Undertakings, Corporate Bodies etc:**

The jurisdiction of the Vigilance Department extends to all public sector undertakings, corporate bodies, statutory corporations and other similar bodies in the proper administration of which State Government is concerned, particularly from the financial point of view, with the agreement of the concerned bodies.

## CHAPTER II

### ENQUIRY/INVESTIGATION

#### 1. Sources of information:-

**1.1.** Information about corruption, malpractices or misconduct on the part of Government servants may come to light from any source, such as-

- (a) Complaints received by an administrative authority;
- (b) Complaints received in the Vigilance Department, Himachal Pradesh;
- (c) Complaints received or intelligence gathered by the Anti- Corruption Unit and by Police authorities;
- (d) Departmental inspection reports and stock verification surveys;
- (e) Scrutiny of annual property statements;
- (f) Scrutiny of transaction reported under the conduct rules;
- (g) Reports of any irregularities in accounts revealed in the routine audit of accounts e.g. as tampering with records, over-payments, misappropriation of money or materials, etc;
- (h) Audit reports on Government accounts and on the accounts of Public Undertakings and other corporate bodies etc;
- (i) Reports of Vidhan Sabha Committee like the Estimates Committee, Public Accounts Committee and the Committee on Public Undertakings;
- (j) Proceeding of the Vidhan Sabha ;
- (k) Complaints and allegations appearing in the press, etc.

**1.2.** Information about corruption and malpractices on the part of public servants may also be received from their subordinates or other public servants. While normally a public servant is required to address communications through the proper official channel, there should be no objection to entertaining direct complaints or communications giving information about corruption or other kinds of malpractices. While genuine complainants should be afforded protection against harassment or victimization serious notice should be taken if a complaint is, after verification, found to be false and malicious. There should be no hesitation in taking severe departmental action or launching criminal prosecution against such complainants.

**1.3.** Apart from information gathered from outside sources, the ex-officio Vigilance Officer should devise and adopt such other methods as he may consider appropriate and fruitful in the context of the nature of work handled in his organisation for collecting information about any possible malpractices and misconduct among the employees of his organization.

#### 2. Initial action on complaints:

##### 2.1. Anonymous and pseudonymous complaints:

**2.1.1.** It has been observed that a good many anonymous complaints are false and malicious and that such complaints are not a reliable source of information. Inquiries into such complaints have an adverse effect on the morale of the services. The Government of Himachal Pradesh have, therefore, decided that no action should be taken on anonymous complaints against Government servants.

**2.1.2.** The Government have also decided that pseudonymous complaints against Government servants should be treated similarly. In case of a doubt, the pseudonymous character of a complaint could be verified by enquiring from the signatory of the complaint whether it has actually been sent by him. If he cannot be contacted at the address given in the complaint or if complaint is pseudonymous and should be filed.

##### 2.2. Complaints received by Administrative Departments:

**2.2.1.** When a complaint is received by the Administrative Department, it will examine whether it contains allegations of corruption or improper motive or involves or involves a vigilance angle or not. If the complaint in question contains an allegation of corruption or improper motive or allegations of vigilance nature, then the complaint should be forwarded to the Vigilance Department for its advice. The Vigilance Department will then decide as to whether the complaint is to be enquired into by an officer of the department concerned or by the Anti-Corruption Unit. If the allegations contained in complaint are such as to make a prima facie case for investigation then the Vigilance Department will advise Anti-

Corruption Unit to register the case for investigation. As soon as the S.P. (Vigilance) takes up the complaint either for enquiry or for investigation, he will inform the Heads of Department concerned.

**2.2.2.** Complaints which are purely of administrative nature or technical lapses such as late attendance, disobedience, insubordination, negligence, lack of supervision or operational or technical irregularities or any other lapses not having any vigilance angle will not be forwarded to the Vigilance Department. On such complaints, the Administrative Department concerned will take appropriate action of its own. In certain cases, the allegations contained in a complaint may be of both types i.e. of vigilance nature as well as of administrative nature. In certain other cases it may be difficult to decide whether a particular complaint contains allegations of vigilance nature or of administrative nature. All such complaints should be forwarded to the Vigilance Department for its advice as to the further course of action.

**2.2.3.** In cases in which the allegations are such as to indicate prima facie that a criminal offence has been committed but the offence is one which is different from those defined in section 5 of Prevention of Corruption Act, 1947 and sections 161 to 165-A, 409, 420, 465, 468, 471 and 471-A of the Indian Penal Code, then the case should be handed over to the local Police for proper investigation.

### **2.3. Complaints received in the Vigilance Department:**

**2.3.1.** When a complaint is received by Vigilance Department from any source (either from A.C.U. or From A.D. or directly from the complainant), it will decide whether to entrust the complaint to an officer of the Administrative Department for enquiry or to the Anti-Corruption Unit for enquiry/investigation. When the Vigilance Department decides to entrust a complaint to the Anti-Corruption Unit for enquiry/investigation, the Administrative Department concerned will be informed immediately. As soon as the S. P. (Vigilance) takes up a complaint for enquiry/ investigation he will also inform the Head of Department concerned giving a gist of the allegations about which the enquiry/investigation is being made.

**2.3.2.** As a general rule cases of the types given below are entrusted to the Anti-Corruption Unit by the Vigilance Department :-

- (i) Allegations involving bribery, corruption, forgery, cheating, criminal breach of trust, falsification of records, etc;
- (ii) Possession of assets disproportionate to known sources of income;
- (iii) Cases in which the allegations are such that their truth cannot be ascertained without making enquiries from non-official persons or those involving examination of non-Government records, books of accounts etc.

**2.3.3.** Once a case has been entrusted to the Anti-Corruption Unit for enquiry/investigation, further enquiries should be left to them and departmental enquiry, if any, commenced already should be held in abeyance until such time as the enquiry/investigation by A.C.U. has been completed. Parallel enquiry by a departmental officer of any kind should be avoided.

### **3. Preliminary enquiry by departmental officers:**

**3.1.** After it has been decided that the allegations contained in a complaint should be looked into departmentally, the administrative department should decide whether the allegations are to be inquired into by the ex-officio Vigilance Officer or some other departmental officer. In cases where appreciation of technical data and documents is involved, the administrative authority should appoint a technical officer to enquire into the allegations. Similarly, if the Government servant complained against is of senior rank then the enquiry should be entrusted to an officer of sufficiently higher status. The officer so appointed to enquire into the allegations should proceed to make a preliminary enquiry to determine whether prima facie there is some substance in them.

**3.2.** The preliminary enquiry may be made in several ways depending upon the nature of the allegations and the judgment of the enquiry officer, e.g.:

- (a) If the allegations contained information which can be verified from any documents or files or any other departmental records, the enquiry officers should, without loss of time, secure such records, etc., for personal inspection. If any of the papers examined is found to contain evidence supporting the allegations, such papers should be taken over by him for retention in his personal custody to guard against the

possibility of available evidence being tampered with. If the papers in question are required for any current action, it may be considered whether the purpose would not be served by substituting authenticated copies of the relevant portions of the record, the original being retained by the Enquiry Officer in his custody. If that is not considered feasible for any reason, the officer requiring the documents papers in question for current action should be made responsible for their safe custody after retaining authenticated copies for the purpose of the enquiry.

- (b) In cases where the alleged facts are likely to be known to any other employees of the department, the enquiry officer should interrogate them orally or ask for their written statements. The Enquiry Officer should make a full record of the oral interrogation which the person interrogated should make a be asked to sign in token of confirmation. Whenever necessary , any important facts disclosed during the oral interrogation or in written statements should be verified by documentary or collateral evidence to make sure of the allegations.
- (c) In case it is found necessary to make enquiries from the employees of any other Government department of office, the Enquiry Officer should seek the assistance of the department concerned for providing facility for interrogating the person or persons concerned and/or taking their written statements.
- (d) In certain types of complaints, particularly those pertaining to works, the Enquiry Officer will find it helpful make a site inspection or a surprise check to verify the facts on the spot and also to take suitable action to ensure that the evidence found there in support of the allegations is not disturbed.
- (e) If during the course of enquiry it is necessary to collect evidence from non-official persons or to examine any papers or documents in their possession and if the enquiry officer fails to examine such witnesses etc. then further inquiry in the matter should be entrusted to the Anti-Corruption Unit through Vigilance Department.
- (f) If the Government servant complained against is in charge, of stores, equipment, etc.; and there is a possibility of his tampering with the records pertaining to such stores and equipment, the enquiry officers should seek the assistance of the Head of the Department/Office in getting the Government servant transferred immediately to some other duties.

**3.3.** During the course of preliminary enquiry the Government servant complained against him to find out if he is in a position to give any satisfactory information or explanation which may render any further enquiry unnecessary. That may be done by the Enquiry Officer by interrogating him personally or by asking him to give a written statement. If he refuses to answers questions or to give a written statement that fact should be recorded by the Enquiry Officer.

**3.4.** An opportunity to give a written statement may not, however, be given in cases in which a decision to institute departmental proceedings is to be taken without any loss of time, for example, in a case in which the Government servant concerned is due to retire or to superannuate soon and it is necessary to issue the statement of charges to him before retirement. It may not also be necessary to give such opportunity in which sufficient documentary evidence is available to indicate a prima facie case against him.

**3.5.** After the preliminary enquiry has been completed the officer who has made the enquiry will prepare a self contained report showing whether or not sufficient evidence is available to support the allegations. The Enquiry Officer will submit his report to the disciplinary authority. The latter will then forward the report of the Inquiry Officer together with its comments to the Vigilance Department for advice. The Vigilance Department will then examine the report and give its advice to Administrative Department as to the further course of action to be taken on the enquiry report.

#### **4. Preliminary enquiry/regular investigation by the Anti-Corruption Unit:**

**4.1.** In all cases in which the information available with Anti-Corruption Unit appears to be authentic and definite so as to make out a clear cognizable offence or to have enough substance in it, the unit may register a preliminary enquiry against a non-gazette official under orders of the Superintendent of Police (Vigilance) who will also inform the Vigilance Department and the Head of the Department concerned as soon as the enquiry is taken up, or the case is registered. For this purpose the Inspectors and Sub-Inspectors in the zones will collect information about cases of corruption and may forward the same with their recommendations directly to the Superintendent of Police (Vigilance) with copies to the Deputy

Superintendent of Police in charge of their Zones. However, all complaints/source reports against gazetted officers received by the Anti-Corruption Unit will, in the first instance, be forwarded to the Vigilance Department for orders as to the further course of action to be taken on them.

**4.2.** The Heads of Departments will be taken into confidence in respect of all preliminary enquiries and regular investigation of cases by the Anti-Corruption Unit against gazetted officers and non-gazetted officials. For this Superintendent of Police (Vigilance) will inform the Head of the Department through a report as soon as a preliminary enquiry is taken up or a case is registered for regular investigation. In this report Superintendent of Police (Vigilance) will give a gist of the Department concerned but he will not disclose the source of the complaint. It is imperative for the Head of the Department to ensure complete secrecy in such cases. For this he should make sure that such reports from S.P. (Vigilance) are not dealt with in a routine manner. Records of all such cases should be in the personal custody of the ex-officio Vigilance Officer of the Department.

**4.3.** If on the completion of a preliminary enquiry against a non-gazetted official, S.P. (Vigilance) is of the opinion that an offence is made out against the delinquent then he can order registration of a case for investigation against a non-gazetted official. He should, however, inform the Vigilance Department and the Head of the Department concerned immediately. In case of a gazetted officer, S. P. (Vigilance) is required to forward the report to the Vigilance Department who after examining the same will advise as to the further course of action to be taken on the enquiry report.

**4.4.** If on completion of investigation the Anti-Corruption Unit may come to the conclusion that sufficient evidence is forthcoming for launching a criminal prosecution against the accused Government servant then the final report of investigation in such cases shall be forwarded to the Vigilance Department if sanction for prosecution is required under the law. The report will be accompanied by a draft order in prescribed form and will give the rank and designation of the authority competent to dismiss the delinquent officer from service and the law or rules under which the authority is competent.

**4.5.** If the completion of preliminary enquiry or on the completion of investigation of a case in which the evidence available is not sufficient for launching criminal prosecution, the Anti-Corruption Unit may come to the conclusion that:

- (i) The allegations are of a nature serious enough to justify regular departmental action being taken against the Government servant concerned. The final report in such cases will be accompanied by (a) draft articles of charge prepared in the prescribed form, (b) a statement of allegations in support of each charge, and (c) a list of witnesses and documents to be relied upon to prove the charges and allegations; or
- (ii) While sufficient proof is not available to justify prosecution or regular departmental action, there is a reasonable suspicion about the honesty or integrity of the Government servant concerned. The final report in such cases will seek to bring to the notice of the disciplinary authority the nature of irregularity or negligence for such administrative action as may be considered feasible or appropriate.

**4.6.** Reports of preliminary enquiry or investigation of both types mentioned on paragraph 4.5, should be forwarded in duplicate by the Anti-Corruption Unit to the Vigilance Department who would advise the disciplinary authority concerned regarding the course of further action to be taken. Then a copy of the report will be sent to the Department/Office concerned with the advice of the Vigilance Department. In such cases no further departmental fact-finding enquiry should normally be necessary. However, if there are any points on which the disciplinary authority may desire to have additional information or clarification, the Vigilance Department may be required to furnish the required information/clarification.

**4.7.** In cases in which preliminary enquiry discloses that there is no substance in the allegations, the Anti-Corruption Unit may decide to close the case. Such cases pertaining to gazetted officers will be reported to the Vigilance Department. In other cases the decision to close a case should be communicated by the Anti-Corruption Unit to the administrative authority concerned through the Vigilance Department.

**4.8.** Investigation in certain cases may reveal that sufficient evidence is available justifying prosecution as well as departmental action. In such cases it has to be considered as to whether prosecution should precede departmental action or vice versa. Normally prosecution should be the general rule in case in which the offences are of bribery, corruption or other criminal misconduct involving loss of substantial public funds and which are found fit for prosecution on the basis of the evidence available. In such cases departmental action should not precede prosecution. In other cases involving less serious

offences or involving malpractices of a departmental nature, departmental action should be taken and the question of prosecution should generally not arise.

**5. Distinction between a vigilance complaint and a vigilance case:**

**5.1.** A vigilance complaint should be treated as such till the stage of the enquiry/investigation is over. At that stage it will either be dropped or it will be decided to institute a regular departmental proceedings or to launch criminal prosecution. In either case it will be treated as having taken the shape of a vigilance case.

A 'vigilance complaint' would include-

- (i) Fact-finding enquiries pending with Anti-Corruption Unit;
- (ii) Fact-finding enquiries of vigilance nature pending with the Administrative Departments;
- (iii) Registered cases which are being investigated by the Anti-Corruption Unit.

Thus a 'vigilance case' would include-

- (i) All cases of vigilance nature pending in a court of law; and
- (ii) All cases where regular departmental action has been advised by the Vigilance Department.

**5.2.** The date of commencement of a 'vigilance complaint' would be the date on which the Vigilance Department advised the Administrative Department/Anti-Corruption Unit to enquire into the complaint. In other vigilance complaints the date of Commencement would be the date on which F.I. R. is lodged at the Police Station by Anti-Corruption Unit.

**5.3.** The date of commencement of a 'vigilance case' would be that date on which the Vigilance Department tendered its advice to start regular departmental action against the delinquent/delinquents. In other vigilance cases, its commencement would be reckoned from the date on which prosecution sanction is accorded by the competent authority.

**6. Issue of Vigilance Clearance Certificates:**

**6.1.** In all cases of promotion or confirmation of Government servants, the vigilance clearance certificate is required to be issued in respect of the Government servants who are due for such promotion or confirmation as the same is required to be placed before the Departmental Promotion Committee.

**6.2.** In case of promotion from one non-gazetted post to another non-gazetted post or confirmation against any non-gazetted post, vigilance clearance certificate is not required to be obtained from the Vigilance Department. But in such cases the competent authority would itself issue the Vigilance clearance certificate.

**6.3.** In cases where a Government servant is due for promotion from a non-gazetted post to a gazette post or from one gazette post to another gazette post or for confirmation against any gazette post, vigilance clearance certificate has to be obtained by the competent authority from the Department of Vigilance.

**6.4.** The vigilance clearance certificate will not be issued by the Vigilance Department or the competent authority as the case may be in respect of a Government servant if-

- (1) His name figures in the list of officers of doubtful integrity, or
- (2) Regular departmental action against him has been advised by the Vigilance Department, or
- (3) A case of vigilance nature is pending against him in a court of law, or

But the vigilance clearance certificate will be issued by the competent authority or the Vigilance Department as the case may be in respect of Government servant in all other cases.

**7. Promotion/Confirmation of Government servants whose conduct is under investigation:**

To safeguard the interest in the matter of confirmation and promotion of a Government servant whose conduct is under investigation the procedure described in paragraph 12 of Chapter IV' on Suspension' should be followed mutatis mutandis (Also see para 6 above).

## 8. Action against persons making false complaints:

**8.1** If a complaint against a Government servant is found to be malicious, vexatious or unfounded, it should be seriously considered whether action should be taken against the complainant for making a false complaint.

**8.2** Under section 182 of the Indian Penal Code a person making a false complaint can be prosecuted. Section 182 reads as follows:-

“Whoever gives to any public servant any information which he knows or believes to be false intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant-

- (a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or
- (b) to use the lawful power of such public servant to the injury or annoyance of any person,

Shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

### Illustrations

(a) A informs a Magistrate that Z, a police officer, subordinate to such Magistrate, has been guilty of neglect of duty or duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z, A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's Premises, attended with annoyance to Z. A has committed the offence defined in this section.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighborhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.

**8.3.** If a person making a false complaint is public servant, it may be considered whether departmental action should be taken against him as an alternative to prosecution.

**8.4.** Under section 195 (1) (a) of Code of Criminal Procedure, a person making a false complaint can be prosecuted on complaint lodged with a court of competent jurisdiction by the public servant to whom the false complaint was made or by some other public servant to whom he is subordinate. Section 195 (1) (a) of Criminal Procedure Code reads as follows:-

**195.** Prosecution for contempt of lawful authority of public servants for offences against public justice and for offences relating to documents given in evidence.- (1) No Court shall take cognizance-

- (a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
- (ii) Of any abetment of, attempt to omit, such offence, or
- (iii) Of and criminal conspiracy to commit such offences,

Except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

**8.5.** When the Vigilance Department comes across any such complaint while dealing with matters that come up before it, the department would advise the administrative authority concerned about appropriate action to be taken on its own initiative.

**8.6.** The complete record of such cases arising in any department may be sent to the Vigilance Department who after examining the evidence available will advise whether the complainant should be prosecuted or not. Further necessary action in the matter will then be taken by the administrative authority itself in accordance with the law. If the complainant is a Government servant the Vigilance Department may advise appropriate departmental action being taken against him as an alternative to prosecution.

**9. Resignation pending enquiry/investigation:**

In case an officer against whom an enquiry/investigation is pending (Whether he has been placed under suspension or not) submits his resignation, such resignation should not normally be accepted. Where however, the acceptance of resignation is considered necessary in public interest, the resignation may be accepted with the prior approval of the Vigilance Department.

**10. Expeditious completion of vigilance complaints and vigilance cases:**

The ex-officio Vigilance Officer of each department should keep a close watch on the progress made for disposal of vigilance case. He should ensure that these are disposed of as expeditiously as possible. To keep a watch on the progress made in this respect, he is required to send quarterly returns and half yearly returns to the Vigilance Department on prescribed proforma given in the appendix. He should ensure that these return are submitted within the stipulate period. Unnecessary delays in completion of vigilance complaints/cases by the Ant-Corruption Unit or by the Inquiring Authorities or by the Vigilance Department should be brought to the personal notice of the Director of Vigilance by the ex-officio Vigilance Officers of the department, the ex-officio Vigilance Officer should also submit the progress made in all vigilance complaints/cases to the Head of the Department and the Administrative Secretaries once in every quarter.

**11. Maintenance of Vigilance Complaint and Vigilance Case Registers:**

**11.1.** The ex-officio Vigilance Officer in Administrative Department will maintain two registers namely (i) Vigilance Complaint Register, and (2) Vigilance Case Register on the prescribed proforma given in the appendix. The vigilance department will also maintain these two registers department-wise.

**11.2.** When a complaint is taken up for enquiry by a departmental officer on the advice of the Vigilance Department, it will be entered in the 'Vigilance Complaint Register' both by the ex-officio Vigilance Officer of the Administrative Department concerned and by the Vigilance Department. Similarly when a complaint is taken up for enquiry/investigation by A.C.U., it will be entered in the 'Vigilance Complaint Register' both by the ex-officio Vigilance Officer of the Administrative Department concerned by the Vigilance Department.

**11.3.** If on an examination of the enquiry report submitted by the Administrative Department or by A.C.U. the Vigilance Department advises the Administrative Department to start regular departmental action against the delinquent(s) then it will take the shape of a vigilance case and will be entered in the 'Vigilance Case Register' by the ex-officio Vigilance Officer of the Administrative Department concerned and by the Vigilance Department. In case the Vigilance Department advises A.C.U. to register a case for regular investigation on the basis of the enquiry reports, it will remain a vigilance complaint and will not be entered in the 'Vigilance Case Register'.

**11.4.** After the investigation is completed by A.C.U., if the Vigilance Department advises the Administrative Department to start regular departmental action against the delinquent (s), it will take the form of a vigilance case and will be entered in the 'Vigilance Case Register' both by the ex-officio Vigilance Officer of the Administrative department concerned and by the Vigilance Department. Similarly if prosecution is launched by A.C.U., after prosecution sanction is accorded by the competent authority, the case takes the form of a vigilance case and will be entered in the 'Vigilance Case Register' both by the ex-officio Vigilance Officer of the Administrative Department concerned and by the Vigilance Department.

**11.5.** The two registers will be maintained up-to date both by the ex-officio Vigilance Officer of the Administrative Departments and by the Vigilance Department.

## CHAPTER III

### FACILITIES AND CO-OPERATION REQUIRED TO BE EXTENDED TO THE ANTI-CORRUPTION UNIT

#### 1. Full co-operation to be extended to the Anti-Corruption Unit:

The Anti-Corruption Unit takes up for preliminary enquiry of regular investigation all cases coming to its knowledge from various sources such as information collected from its own sources, that received from members of public or individual public servants or public organizations or cases referred to it for preliminary enquiry or regular investigation by the Vigilance Department, Full co-operation and facilities should be extended to the Anti-Corruption Unit by the administrative authorities and individual public servants during the course of enquiry or investigation of cases.

#### 2. Inspection of Government records:

**2.1.** The Heads of Departments/Officers etc./ will ensure that during preliminary enquiry or regular investigation, the Enquiry/Investigating Officers are given full co-operation and facilities to see all relevant records.

**2.2.** Investigations are often held up or delayed on account of reluctance or delay on the part of departmental authorities to make records available for various reasons. Sometimes departmental authorities express their inability to release the records without the prior permission of the superior authority or the Anti-Corruption Unit is requested to take Photostat or attested copies of documents without realising that the Anti-Corruption Unit necessarily require the original records for purposes of investigation. The authenticity of attested or Photostat copies could be contested by the delinquent officials thereby hampering the progress of investigation. In asking for original documents, part of current files, due consideration should be exercised so that day-to-day work is not impeded. Where necessary, the departmental authorities may keep attested or Photostat copies of the records for meeting urgent departmental needs of for disposing of any action that may be pending on the part of the department without prejudice to the investigation, being carried out by the Anti-Corruption Unit.

**2.3.** The records required by the Anti-Corruption Unit should be made available to them ordinarily within a fortnight and positively within a month from the date of receipt of the request. If for any special reason it is not possible to hand over the record within a month, the matter should be brought by the authority in possession of the records to the notice of the Superintendent of Police of the Anti-Corruption Unit pointing out the reasons for not making available the records within the period specified.

#### 3. Classified/Graded documents/records:

When the Anti-Corruption Unit desires to see any classified documents/records: sanction of the competent authority to release such documents/records should be obtained promptly by the administrative authority in charge of records and the records should be made available to the Anti-Corruption Unit in the following manner:-

- (i) top secret documents should be handed over only to a gazette officer of the Anti-Corruption Unit, (Inspectors of the Anti-Corruption Unit are not gazette officers);
- (ii) secret and confidential documents should be given to gazetted officer of the Anti-Corruption Unit if he is specially authorized by the Superintendent of Police, A.C.U., to obtain such documents;
- (iii) a temporary receipt should be obtained whenever any graded document is handed over to an officer of the A.C.U.;
- (iv) the originator of the classified documents/records should also be informed;
- (v) where original documents cannot be made available to the investigating officer for any reason, he should be supplied with Photostat copies or attested copies and a certificate should be given by an officer of appropriate rank that the originals are in safe custody and out of the reach of suspect official and will be produced whenever required;
- (vi) current files having a bearing on the day-to-day administration will not be handed over to the Anti-Corruption unit at preliminary stage of its investigation. However, copies or extracts will be supplied, if necessary.

#### **4. Obtaining documents from Audit Offices:**

**4.1.** During the course of investigation of cases by the Anti-Corruption Unit, it is sometimes, found that certain documents having a bearing on the case are in possession of an Audit Office. In order that such documents are available for inspection and examination and to ensure that the police investigation in such cases is not hampered, the procedure described in succeeding paragraphs for inspection etc. of such records should be followed by the Anti-Corruption Unit.

**4.2.** The facility of inspection of original documents etc., in the Audit Office is available to the Anti-Corruption Unit for purpose of investigation. And normally this facility should be found adequate for the purpose of investigation. But there may be some cases in which mere inspection of the documents at the Audit Office will not be adequate and the Investigating Officer may find it necessary to obtain custody of the original documents in possession of an Audit Office to proceed with the investigation. Each such case should be reported by the Investigating Officer to the Superintendent of Police, Anti-Corruption Unit.

**4.3.** Request for taking possession of original documents from Audit Office/Treasury Office etc. should be made only in cases where it is really necessary. Before making a request to the Director of Vigilance for obtaining requisition for such documents, the Superintendent of Police, Anti-Corruption Unit should satisfy himself in regard to such need. If the documents are required to obtain the confronted statements of only one or two witnesses, then the witnesses should be taken to the office where these documents are kept and their confronted statements recorded with reference to the document/documents in question. No request need be made for the supply of original documents in cases of this type. The reasons as to why investigation cannot be successfully carried on without obtaining the original documents and why attested copies cannot serve the purpose of investigation should be clearly mentioned while making such request. The Superintendent of Police, A.C.U. should verify that the reasons are correct and justifiable.

**4.4.** After carefully examining the request of the Investigating Officer and satisfying himself that there is sufficient justification for obtaining the original documents, the Director of Vigilance will request the Accountant General concerned that required documents be handed over to the Investigating Officer in original. In making such request it should be expressly mentioned that attested copies would not serve the purpose of the Investigating Officer. The Accountant General concerned will then arrange for the required documents being handed over to the Investigating Officer as early as possible.

#### **5. Examination of disputed documents by Government Examiner of Questioned Documents :**

**5.1.** The Anti-Corruption Unit may find it necessary to take the assistance of the Government Examiner of Questioned Documents during the course of inquiries/investigations for the following types of examinations:-

- (i) to determine the authorship or otherwise of the questioned writings by a comparison with known standards;
- (ii) to detect forgeries in questioned documents;
- (iii) to determine the identity or otherwise of questioned type scripts by comparison with known standards;
- (iv) to determine the identity or otherwise of seal impression;
- (v) to decipher (mechanically or chemically) erased or altered writings;
- (vi) to determine whether there have been intercalation, addition or over-writings and whether there has been substitution of papers;
- (vii) to determine the order of sequence of writings as shown by cross strokes and also to determine the sequence of strokes which crosses, creases or folds the questioned documents where additions are suspected to have been made;
- (viii) to detect any tampering in wax seal impressions;
- (ix) to decipher secret writings;
- (x) to determine the age of documents and other allied hand-writing problems.

**5.2.** When original documents are required by the Anti-Corruption Unit for getting the opinion of the Government Examiner of Questioned Documents, such documents should be made available to the A.C.U. by the administrative authorities concerned without delay.

## **6. Grant of immunity/pardon:**

**6.1.** If during an investigation the Anti-Corruption Unit finds that a public servant has made a full and true disclosure implicating himself and other public servants or members of the public and further such statement is free from malice, the Superintendent of Police, Anti-Corruption Unit will send to the Vigilance Department his recommendations regarding grant of immunity to such person from departmental action or punishment. In such a case, the Vigilance Department will consider the recommendation of the Anti-Corruption Unit in Consultation with the administrative authority concerned and will advise that authority regarding the course of further action to be taken.

**6.2.** If it is decided to grant immunity to such a person from departmental action the Vigilance Department will advise the Anti-Corruption Unit whether-

- (i) to produce him at appropriate time before a Magistrate of competent jurisdiction, for the grant of pardon under section 306 of the Code of Criminal Procedure, 1973; of
- (ii) to withdraw prosecution at the appropriate stage under section 321 of the Code of Criminal Procedure, 1973.

The Anti-Corruption Unit will take necessary steps in due course according to the advice tendered by the Vigilance Department.

## **7. Transfer of an officer against whom serious charge are under investigation:**

**7.1.** In cases where the Anti-Corruption Unit are investigating serious charges and request for the transfer of a public servant, such requests should normally be complied with. The Anti-Corruption Unit will recommend transfer only when it is absolutely necessary for the purpose of investigation and will give reasons while making such request. Such request will be signed by the Superintendent of Police, Anti-Corruption Unit.

**7.2.** Where the department concerned has some administrative difficulty in complying with the request, the matter should be settled by discussion at the local level. If difference persists, it should be discussed at a higher level. In exceptional cases, the matter may discussed by the Secretary of Administrative Ministry with the Chief Secretary.

**7.3.** While it is recognized that the discretion of the administrative departments should not be taken away in matters of this kind, it is equally necessary that there should be no impediments to proper investigation of allegations of corruption and lack of integrity. It is hoped that both these considerations would be borne in mind by all concerned.

## **8 Laying of traps:**

**8.1.** Wherever the Anti-Corruption Unit desires to lay a trap in respect of any gazette Government servant of Himachal Pradesh, who is suspected to be about to accept a bribe, the Unit will obtain the prior approval of the Government before laying traps on Heads of Departments and class I officers and the prior approval of Director of Vigilance or in his absence the Superintendent of Police (Vigilance) before laying traps on other gazette class II officers. In case both Director of Vigilance and the Superintendent of Police (Vigilance) are not available for consultation and it is necessary to conduct a raid on a gazette class II officer without delay, the same may be conducted with the approval of the Deputy commissioner of the district concerned, Immediately after the trap, the Anti-Corruption Unit will furnish the complete details of the case to the Vigilance Department and also inform the Head of the Department/Officer concerned.

**8.2.** In cases where immediate action for laying a trap is required to be taken and it is felt that the approval of competent authority as indicated in the above sub-paragraph will entail delay which may be detrimental to the success of the trap, the Anti-Corruption Unit, may act in its discretion, but immediately after the trap, details of the case will be sent to such competent authority explaining with full justification, the circumstances under which it was felt that prior approval of the competent authority would have caused undesirable delay. In such cases also, the details of the case would be sent to the Head of the Department/Office immediately after the trap.

**8.3.** Traps against non-gazetted officers may be laid with the prior approval of the Deputy Superintendent of Police of the Zone concerned. Traps against non-gazetted officers can also be laid with the prior approval of the Deputy Commissioner of the district concerned. Immediately after, the trap, the officer who laid the trap will furnish the complete

details of the case to the Deputy superintendent of Police of the Zone concerned who in turn would inform the Superintendent of Police (Vigilance), the Vigilance Department, and the Head of the Department/Office concerned.

**8.4.** In trap cases, it is necessary that some responsible and impartial person or persons should have witnessed the transaction and/or overheard the conversation of the suspect public servant. All public servants, particularly gazette officers, should assist and witness a trap, whenever they are approached by the Anti-Corruption Unit to do so. The Head of Department/Officers will, when requested by the Anti-Corruption Unit, details suitable person or persons to be present at the scene of trap. Refusal to assist or witness a trap may be regarded as a breach of duty.

#### **9. Action to be taken when a bribe is offered:**

**9.1.** Dishonest and unscrupulous traders, contractors, etc., frequently attempt to bribe a public servant to get official or to avoid official disfavor. Public servants must always be on their guard and should avail themselves of the assistance of the Anti-Corruption Unit or the local Police in apprehending such cases. Failure to take correct action may result in the escape of the guilty person. It is not enough for the public servant to refuse the bribe and later report the matter to the higher authorities. When an attempt to bribe him is suspected, action should be taken as follows:-

- (i) The proposed interview should, where possible, be tactfully postponed to some future time. Meanwhile the matter should be reported to in charge Anti-Corruption Unit of the district if there is one otherwise to the Superintendent of Police, or to the senior most officer of the local police available in the station. The A.C.U. or the local police, as the case may be, will arrange to lay a trap.
- (ii) Should it not be possible to follow the above course of action, the bribe-giver may be detained for a short time and any person or persons who may be readily available may be requested to witness the transaction and to overhear the conversation between the bribe-giver and the public servant.

**9.2.** The Head of the Department/Office/Establishment will take care to maintain an impartial position and will in no case act as an agent of the Anti-Corruption Unit either by arranging for money or other instrument of offence subsequently to be passed on to the suspect or by being a witness to the transaction.

#### **10. Witnesses:**

**10.1.** Whenever the Anti-Corruption Unit desires the presence of an official for examining him in connection with any investigation, the administrative authority will direct the official concerned to appear before the Anti-Corruption Unit on the appointed date and time. If, for any reason, it is not possible for him to appear on the specified date and time and he requests for postponement, such request may be given due consideration by the administrative authority concerned and he may be directed to appear at the earliest possible opportunity.

**10.2.** The Anti-Corruption Unit, when the interest of Government work so requires, may examine an officer occupying or holding a responsible position at the place where he is located unless he has to be shown a number of documents during the recording of his statement or the movement of documents is considered hazardous.

#### **11. Request for suspension of Government servants:**

The Anti-Corruption Unit may, either during the course of investigation or while recommending prosecution/departmental action, suggest to the disciplinary authority that the suspect officer should be suspended giving reasons for recommending such a course for recommending such a course of action. On receipt of such suggestion the matter should be carefully examined. The disciplinary authority should consider the request and take a decision at his discretion. Certain guide-lines for considering the need and desirability of placing a Government servant under suspension have been given in paragraph 2 of Chapter IV.

**12. Close liaison between the Anti-Corruption Unit and Administrative Departments:**

The need for close liaison and co-operation between the Vigilance Officers of the Administrative Departments and the A.C.U. during the course of inquiry and investigation and the processing of individual cases hardly needs to be emphasised. Both the A.C.U. and the Vigilance Officers receive information about the activities of the officer of various Departments/Offices etc. from diverse sources. As far as possible, the information could be cross-checked at appropriate intervals to keep officers of both the wings fully apprised with the latest developments. The ex-officio Vigilance Officers of the Departments/Offices should keep themselves in touch with the Superintendent of Police, Anti-Corruption Unit, and discuss personally matters of mutual interest, particularly those arising from enquiries and investigations.

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**CHAPTER IV**  
**SUSPENSION**

{See rule 10 of the C.C.S. (C.C.&A.) Rules, 1965}

**1. Effect of suspension:**

An order of suspension has the effect of debarring a Government servant from exercising the powers and discharging the duties of his office for the period the order remains in force.

**2. When a Government servant may be suspended:**

**2.1.** A Government servant may be placed under suspension when a disciplinary proceeding against him is contemplated or is pending or where, in the opinion of the competent authority, he has engaged himself in activities prejudicial to the interest of the security of the State or when a case against him in respect of any criminal offence is under investigation, enquiry or trial,

**2.2.** The suspended Government servant retains a lien on the permanent post held by him substantively at the time of suspension and does not suffer a reduction in rank. However, suspension may cause a lasting damage to Government servant's reputation even if he is exonerated or is ultimately found guilty of only a minor misconduct. The discretion vested in the competent authority in this regard should, therefore, be exercised with care and caution after taking all factors into account.

**2.3.** It may be considered whether the purpose would be served if the officer was transferred from his post. If he would like to have leave that might be due to him and if the competent authority thinks that such a step would not be inappropriate there should be no objection to leave being granted instead of suspending him.

**2.4.** Public interest should be the guiding factor in deciding whether or not a Government servant, including a Government servant on leave, should be placed under suspension or whether such action should be taken even while the matter is under investigation and before a prima facie case has been established. Certain circumstances under which it may be considered appropriate to do so are indicated below for the guidance of disciplinary authorities:-

- (i) where the continuance in office of the Government servant will prejudice 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 he is working;
- (iii) where the continuance in office of the Government servant will be against the wider public interest and it is considered necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officials involved in such scandals, particularly corruption;
- (iv) where a preliminary enquiry into allegations made has revealed a prima facie case justifying criminal or departmental proceedings which are likely to lead to his conviction and /or dismissal, removal or compulsory retirement from service;
- (v) where the public servant is suspected to have engaged himself in activities prejudicial to the interest of the security of the State.

**2.5** In the circumstances mentioned above it may be considered desirable to suspend a Government servant for misdemeanors of the following types:-

- (i) an offence or conduct involving moral turpitude;
- (ii) corruption, embezzlement or misappropriation of Government money, possession of disproportionate assets, misuse of official powers for personal gains;
- (iii) serious negligence and dereliction of duty resulting in considerable loss to Government;
- (iv) desertion of duty;
- (v) refusal or deliberate failure to carry out written orders of superior officers.

In cases of types (iii), (iv) and (v) discretion should be exercised with care.

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

competent authority may in such cases suspend a Government servant even if the appellate or reviewing authority had not given any direction that Government servant should be suspended.

**2.7.** A Government servant against whom proceedings have been initiated on a criminal charge but who is not actually detained in custody (e.g. a person released on bail) may be placed under suspension by an order of the competent authority under clause (b) of rule 10(I) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. If the charge is connected with the official position of the Government servant or involves any moral turpitude on his part suspension shall be ordered under this rule unless there are exceptional reasons for not adopting this course.

### **3. Competent authority:**

**3.1.** A Government servant governed by the Central Civil Services (C.C. &A.) Rules, 1965, may be placed under suspension:

- a) by the “appointing authority” as defined in rule 2(a) of the Central Civil Services (C.C. & A.) Rules, 1965; or
- b) by any authority to which the appointing authority is subordinate ; or
- c) by the disciplinary authority, i.e., the authority competent to impose any of the penalties specified in rule 11 of the Central Civil Services (C.C. & A.) Rules, 1965; or
- d) any other authority empowered in that behalf by the Government by general or special order.

**3.2.** If an order of suspension is made by an authority lower than the appointing authority, but which is competent to pass an order of suspension in respect of the Government servant concerned such authority will report to the appointing authority the circumstances in which the order was made.

**3.3.** Before passing an order of suspension, the authority proposing to make the order should verify whether it is competent to do so. An order of suspension made by an authority which does not have the power to pass such an order is illegal and will give cause of action for-

- a) setting aside of the order of suspension; and
- b) claiming full pay and allowances for the period the Government servant remained away from duty due to the of suspension.

**3.4.** When an order of suspension is made by an authority subordinate to the appointing authority, the appointing authority should, as soon as information about the order of suspension is received, examine whether the authority by whom the order was made was competent to do so.

**3.5.** Where the services of a Government servant are lent by one department to another department or borrowed from or lent to, the Central Government or another State Government or an authority subordinate there to or borrowed from or lent to a local authority or other authority, the borrowing authority can suspend such Government servant under rule 28 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965. The lending authority should, however, be informed forthwith of the circumstances leading to the order of suspension.

**3.6.** In the circumstances stated in rule 3 of the All-India Services (Discipline and Appeal) Rule, 1969, the State Government can suspend a member of an All-India Services if he is serving under a State Government.

### **4. Deemed suspension:**

**4.1.** Under rule 10(2), (3) and (4) of the central Civil Services (C.C.&A.) Rules, 1965, a Government servant is deemed to have been placed under suspension in the following circumstances:--

- i. If a Government servant detained in custody, whether on a criminal charge or otherwise, for a period exceeding 48 hours, he will be deemed to have been placed under suspension by an order of the appointing authority with effect from the date of detention. A Government servant who is detained in custody under any law providing for preventive detention or as a result of provisions for his arrest for debt will fall in this category.
- ii. If a Government servant is convicted of an offence and if he is sentenced to a term of imprisonment exceeding 48 hours and is not forthwith dismissed, removed or compulsorily retired consequent upon such

conviction, he shall be deemed to have been placed under suspension by an order of the appointing authority with effect from the date of his conviction. For this purpose the period of 48 hours will be computed from the commencement of imprisonment after the conviction intermittent periods of imprisonment, if any, will be taken into account.

- iii. Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review and the case is remitted by the appellate or reviewing authority for further enquiry or action or with any other direction the order of suspension will be deemed to have been continued in force on and from the date of original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.
- iv. Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by decision of a court of law and the disciplinary authority, on a consideration of the case, decides to hold a further inquiry against him on the all evasions on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further order.

**4.2.** If a Government servant who has been detained for a period exceeding 48 hours is later unreleased on bail such release will not affect the deemed suspension which will continue to be in force until revoked by the competent authority under rule 10(5)(c).

**4.3.** The police authorities will send prompt intimation of arrest and/or release on bail etc. of a Government servant to the latter's official superior as soon as possible after the arrest and/or release indicating the circumstances of the arrest etc.

**4.4.** A duty has also been cast on the Government servant who may be arrested for any reasons to intimate promptly the fact of his arrest and circumstances connected therewith to his official superior even-though he might have been released on bail subsequently. Failure on the part of Government servant to so inform his official superior will be regarded as suppression of material information and will render him liable to disciplinary action on this ground alone, apart from the action that may be called for on the outcome of the police case against him.

### **5. Order of suspension:**

**5.1.** A Government servant can be placed under suspension only by a specific order made in writing by the competent authority. A standard form in which the order should be made is given in the Appendix. A Government servant should not be placed under suspension by an oral order.

**5.2.** In the case of deemed suspension under Rule 10 (2), (3) or (4) of the CCS. (CC. & A.) Rules, 1965, suspension will take effect automatically even without a formal order of suspension. However, it is desirable for purposes of administrative record to make a formal order, a standard form of which is also given in the Appendix.

### **6. Duration of order of suspension:**

**6.1.** An order of suspension made or deemed to have been made will continue to remain in force until it is modified or revoked by the authority competent to do so. In cases in which the proceedings result in an order of dismissal, removal or compulsory retirement, the order of suspension will cease to exist automatically from the date from which the order of dismissal, removal or compulsory retirement takes effect.

**6.2.** Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise) and any other disciplinary proceeding is commenced against him during the continuation of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.

## **7. Date of effect of order of suspension:**

**7.1.** Except in cases in which a Government servant is deemed to have been placed under suspension in the circumstances described in paragraph 5 above, an order of suspension can take effect only from the date on which it is made. Ordinarily it is expected that the order will be communicated to the Government servant concerned simultaneously.

**7.2.** Difficulty may, however, arise in giving effect to order of suspension from the date on which it is made if the Government servant proposed to be placed under suspension—

- (a) is stationed at a place other than where the competent authority makes the order of suspension;
- (b) is on tour and it may not be possible to communicate the order of suspension;
- (c) is an officer holding charge of stores and/or cash, warehouses, seized goods, bonds, etc.

**7.3.** In cases of types (a) and (b) above, it will not be feasible to give effect to an order of suspension from the date on which it is made owing to the fact that during the intervening period a Government servant may have performed certain functions lawfully exercisable by him or may have entered into contracts. The competent authority making the order of suspension should take the circumstances of each such case into consideration and may direct that the order of suspension will take effect from the date of its communication to the Government servant concerned.

**7.4.** When a Government servant holding charge of stores and/or cash is to be placed under suspension he may not be able to hand over charge immediately without checking and verification of stores/cash etc. In such cases the competent authority should, taking the circumstances of each case into consideration, lay down that the checking and verification of stores and/or cash should commence on receipt of suspension order and should be completed by a specific date from which suspension should take effect after formal relinquishment of charge.

**7.5.** An officer who is on leave or who is absent from duty without permission will not be performing any functions of his office. In such cases there should be no difficulty in the order of suspension operating with immediate effect. It should not be necessary to recall a Government servant if he is on leave for the purpose of placing him under suspension. When a Government servant is placed under suspension while he is on leave, the unexpired portion of the leave should be cancelled by an order to that effect.

**7.6.** No order of suspension should be made with retrospective effect except in the case of deemed suspension *vide* para 5. A retrospective order will be both meaningless and improper.

## **8. Headquarters during suspension:**

**8.1.** The order of suspension should specify the headquarters of the Government servant during the period that the order will remain in force. It should normally be the last place of duty. The competent authority may, however, for reasons to be recorded in writing, fix any other place as his headquarters in the interest of public service.

**8.2.** If a Government servant under suspension requests for a change of headquarters, the competent authority may accede to the request if it is satisfied that such a course will not put Government to any extra expenditure like grant of travelling allowance etc., or create difficulty in investigation or in processing the departmental proceedings etc.

**8.3.** A Government servant under suspension is subject to all the conditions of service applicable to Government servants and cannot leave the headquarters without prior permission.

## **9. Speedy investigation into cases in which an officer is under suspension:**

**9.1.** Though suspension is not a punishment, it constitutes a great hardship for a Government servant. In fairness to him the period of suspension should be reduced to the barest minimum. Investigation into cases of officers under suspension should, therefore, be given high priority and a chargesheet should be filed in the court of competent jurisdiction in cases of prosecution or served on the officers in cases of departmental proceedings not later than six months as a rule. In cases which are taken up by or are entrusted to the Superintendent of Police, Anti-Corruption Unit, Himachal Pradesh, for investigation, the time limit of six months will *hi* reckoned from the date on which the case is taken up for investigation by the Anti-Corruption Unit.

**9.2.** If investigation is likely to take more time, it should be considered whether it is still necessary taking the circumstances of the case into account to keep the officer under suspension or whether the suspension order could be revoked, and if so whether the officer could be permitted to resume duty on the same post or transferred to another post or office.

**9.3.** When an officer is suspended either at the request of the Anti-Corruption Unit or on the Departments own initiative in regard to a matter which is under investigation or inquiry by the Anti-Corruption Unit or which is proposed to be referred to Anti-Corruption Unit, a copy of the suspension order should be sent to the Director of Vigilance, Anti-Corruption Unit, (H.P.) with an endorsement thereof to the Superintendent of Police, A.C.U., H.P. To reduce the time lag between the placing of an officer under suspension and the reference of the case to the Anti-Corruption Unit for investigation, such cases should be referred to the Anti-Corruption Unit promptly after the suspension orders are passed if it is not possible to refer them before the passing of suspension orders.

**9.4.** The instructions contained in sub-paragraphs 9.1 and 9.2 aim at reducing the time taken in investigation into cases of officers under suspension and speeding up the progress of cases at the investigation stage. They do not, in any way abridge the inherent powers of the disciplinary authority in regard to the review of cases of Government servants under suspension at any time either during investigation or thereafter. The disciplinary authority may review periodically cases of Government servants under suspension in which charge-sheets have been served/ filed to see—

- (i) whether the period of suspension is prolonged for reasons directly attributable to the Government servant;
- (ii) What steps could be taken to expedite the progress of the court trial/departmental proceedings;
- (iii) whether the continued suspension of the officer is necessary having regard to the circumstances of the case at any particular stage; and
- (iv) whether having regard to the guide-lines enunciated in paragraph 2 regarding the circumstances in which a disciplinary authority may consider it appropriate to place a Government servant under suspension, the suspension may be revoked and the Government servant concerned permitted to resume duty at the same station or at a different station.

**9.5.** In cases in which the order of suspension is revoked and the Government servant is allowed to resume duty before the conclusion of criminal or departmental proceedings, an order under F.R. -54 regarding the pay and allowances to be paid to him for the period of his absence from duty and whether or not the said period shall be treated as period spent on duty can be made only after the conclusion of the proceedings against him.

#### **10. Appeals against and modification/revocation of order of suspension:**

**10.1.** An order of suspension made or deemed to have been made may be modified or revoked at any time for good and sufficient reasons by the authority that made the order or is deemed to have made the order or by an authority to which that authority is subordinate.

**10.2.** Subject to the provisions of rule 22 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, a Government servant may prefer an appeal against an order of suspension made or deemed to have been made under Rule 10. The appellate authority shall consider whether in the light of the provisions of Rule 10 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

**10.3.** An order of suspension should be revoked without *delay where the Government* servant was placed under suspension pending completion of—

- (i) departmental investigation or inquiry—
  - (a) if it is decided that no formal proceedings need be drawn up with a view to impose a penalty of dismissal, removal, compulsory retirement or reduction in rank;
  - (b) if the Government servant is exonerated of the charges against him
  - (c) if the penalty awarded is not dismissal, removal or compulsory retirement :
- (ii) investigation or trial in respect of any criminal offence—
  - (a) if investigation does not disclose any *prima facie* case of an offence having been committed;
  - (b) if he is acquitted by a competent court; provided it is further decided that departmental proceedings need be initiated on the basis of facts disclosed during investigation or on the basis of facts which led to the launching of prosecution in a court of law.

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

**10.5.** The order of revocation of suspension will take effect from the date of issue. However where it is not practicable to reinstate a suspended Government servant with immediate effect the order of revocation of suspension should be expressed as taking effect from a date to be specified.

**10.6.** On revocation of an order of suspension, a Government servant is reinstated in service. Further action should be taken after such reinstatement as indicated in Chapter XIII. An order of revocation should be made in the prescribed form.

**11. Resignation during suspension:**

If a Government servant who is under suspension submits his resignation, the competent authority should examine with reference to the merits of the disciplinary case pending against him whether it would be in the public interest to accept the resignation. Normally an officer is placed under suspension only in case of grave delinquency, and it would not be correct to accept resignation of an officer under suspension. Where, however, the acceptance of resignation is considered necessary, in the public interest, because of one or more of the following conditions the resignation may be accepted with the prior approval of the Vigilance Department:—

- (a) the alleged offence does not involve moral turpitude, or
- (b) the quantum of evidence against the accused officer is not strong enough to justify the assumption that if the departmental proceedings were continued, the officer would be removed or dismissed from service, or
- (c) the departmental proceedings are likely to be so protracted that it would be cheaper for the public exchequer to accept resignation.

**12. Promotion Confirmation/Reversion of Government servants who are under suspension:**

**12.1.** To safeguard the interests in the matter of confirmation and promotion of Government servants under suspension, the procedure, described in the following paragraphs should be followed.

**12.2.** The suitability of such a Government servant for confirmation and promotion should be assessed at the relevant time by the Departmental Promotion Committee or other authority, as the case may be, and the findings reached as to whether or not if the officer had not been under suspension he would have been recommended for confirmation or promotion. Where a select list is prepared, the competent authority should take a view as to the position which would have been assigned to him in the select list. The findings as to his suitability or otherwise for confirmation/promotion or as to his place on the select list should, however, be recorded separately and attached to the proceedings in a sealed envelope superscribed "Findings regarding merit and suitability for promotion or confirmation in service/grade/post) in respect of (name of the officer)", and "Not to be opened till after the termination of suspension". The proceedings of the Departmental Promotion Committee etc., need only contain a note that "The findings in respect (name of the officer) are contained in the attached sealed cover".

**12.3.** The appointing authority should be separately advised to fill the vacancy that could have gone to the officer but for his suspension on an officiating basis by the next person on the approved list. If the officer concerned is completely exonerated and it is held that the suspension was wholly unjustified, and if he had been adjudged by the Departmental Promotion Committee as fit for promotion in that vacancy, he should be promoted to the post filled on an officiating basis, the arrangement made previously being reversed. Where, however, the post, which could have gone to the officer but for his suspension ceases to exist before the conclusion of the departmental proceedings, he can only be promoted to the first vacancy that may be available in future and if the officer concerned is found fit for promotion at that time.

**12.4.** In cases relating to confirmation, a permanent vacancy should be reserved for such a Government servant till a final decision is reached on the proceedings against him or where such an officer is reduced in rank for a specified period, till he is actually restored to his original rank.

**12.5.** In case of such a Government servant who is promoted after complete exoneration in the first vacancy that becomes available for him, his seniority in the higher grade should be fixed as if he had been promoted in accordance with the position assigned to him in the select list.

**12.6.** In cases where a minimum period of service is prescribed for promotion to the next higher grade but which the Government servant concerned could not put in on account of his suspension, which was ultimately found to be wholly unjustified the period during which any officer junior to the suspended officer concerned was promoted to the higher grade should be reckoned towards the minimum period of service for the purpose of determining his eligibility for promotion to the higher grade.

**12.7.** The pay of such a Government servant should, on promotion, be fixed by allowing the intervening period, during which the suspended officer could not be promoted due to his suspension, to be counted for increments in the higher grade but no arrears would be admissible. Government servants who, though not under suspension, could not be promoted to the higher grade on account of their being implicated in departmental proceedings, or on account of their conducts being under investigation and who are subsequently completely exonerated, should be allowed similar benefits.

**12.8.** A Government servant placed under suspension while officiating in a higher post can be reverted to the lower post otherwise than as punishment even during his suspension.

**13. Subsistence allowance [See F.R. 53 (1)]:**

**13.1.** The competent authority should pass an order regarding the subsistence and other allowances to be paid to the Government servant during the period of suspension simultaneously with the orders of suspension to avoid hardship to the suspended Government servant.

**13.2.** A Government servant under suspension is entitled, to subsistence allowance at an amount equal to the leave salary which he would have drawn if he had been on leave on half pay.

**13.3.** Where the period of suspension exceeds six months, the competent authority may vary the amount of subsistence allowance for any period subsequent to the period of first six months as follows:—

- (i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50% of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the competent authority, the period of suspension has been prolonged for reasons to be recorded in writing not directly attributable to the Government servant;
- (ii) the amount of subsistence allowance may be reduced by a suitable amount, not exceeding 50% of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the competent authority, the period of suspension has been prolonged due to reasons to be recorded in writing directly attributable to the Government servant.

**13.4.** In view of the fact that any failure on the part of the competent authority to pass an order for an increase or decrease of the subsistence allowance, as soon as the suspended officer has been under suspension for six months, can either involve serious hardship to the officer concerned or invoke unnecessary expenditure to the Government, it should be ensured by the competent authority that action is initiated in all such cases and a decision is taken insufficient time before the expiry of the first six months of suspension so that the requisite order can take effect as soon as the suspended Government servant has completed six months under suspension. Under F.R. 53, it is obligatory that such action is taken before the expiry of the first six months of suspension. It is not desirable that any order revising the amount of subsistence allowance should need to be given retrospective effect.

**13.5.** Having regard to all circumstances of the case, the competent authority should decide Whether the rate of subsistence allowance should be increased or decreased or whether no alteration at all in the rate of subsistence allowance is called for. In each case specific orders should be passed by the competent authority placing on record the reasons for the decision taken and copies of the orders should be sent to all concerned even when the competent authority decides not to vary the amount of subsistence allowance.

**13.6.** The maximum and the minimum limits in respect of leave on half pay prescribed in rule 29 of the Central Civil Services (Leave) Rules, 1972, will have to be taken into account in fixing the rate of subsistence allowance but will not apply when the subsistence allowance is increased or decreased after the first six months. In other words when the subsistence allowance is increased or decreased the proportionate increase or decrease will be calculated on the amount of subsistence allowance initially fixed and will not be subject to the maximum or minimum limits on leave salary on half pay.

**13.7.** When the rate of subsistence allowance payable during the period subsequent to the period of the first six months of suspension has been refixed by the competent authority after a review under F.R. 53 (1) (ii), it will be open to the competent authority to make a further review or reviews at anytime at its discretion. As a result of such subsequent review or reviews, it will be permissible to reduce the amount of subsistence allowance increased on the basis of an earlier review if the period of suspension is subsequently found to have been prolonged for reasons directly attributable to the Government servant *e.g.* by his adopting dilatory tactics. Similarly, Where the amount of subsistence allowance had been reduced on the first review, the same can be increased on the subsequent review if the period of suspension is found to have been prolonged for reasons not directly attributable to the Government servant and the Government servant has given up-dilatory tactics. Such subsequent increases or decreases in the amount of the subsistence allowance will be subject to the limit of 50% of the subsistence allowance granted initially.

**13.8.** If the suspended Government servant is not satisfied with the increase/decrease in the subsistence allowance allowed by the competent authority, he may file an appeal to the appellate authority against such an order. The appellate authority may increase/decrease the rate of subsistence allowance not exceeding 50% of the original rate of subsistence allowance.

#### **14. Recoveries from subsistence allowance:**

**14.1.** The following compulsory deductions should be enforced from the subsistence allowance—

- (i) income-tax and super-tax (provided the employee's yearly income calculated with reference to subsistence allowance is taxable);
- (ii) house rent and allied charges, *i.e.* electricity, water, furniture, etc.; and
- (iii) repayment of loans and advances taken from the Government at such rates as may be refixed, if necessary, by the competent authority.

**14.2.** The following deductions which are optional should not be made from the subsistence allowance except with the Government servant's written consent—

- (i) Premiade on Postal Life Insurance Policies.
- (ii) Amounts due to co-operative stores and co-operative credit societies.
- (iii) Refund of advances taken from General Provident Fund.

**14.3.** The following deductions should not be made from the subsistence allowance—

- (i) Subscription to General Provident Fund.
- (ii) Amounts due on Court attachments.
- (iii) Recovery of loss to Government for which a Government servant is responsible.

**14.4.** There is no bar to effecting the recovery of over payment from subsistence allowance, but the competent authority will exercise discretion and decide whether the recovery should be held wholly in abeyance or whether it should be effected. If it is decided to make the recovery, it should not be effected at a rate exceeding 1/3rd of the subsistence allowance excluding dearness allowance and other compensatory allowances, if any, admissible to him.

#### **15. Dearness allowance admissible during suspension:**

**15.1.** A Government servant under suspension is entitled to draw dearness allowance, if admissible, on the basis of leave salary as would be admissible to him, if he were on leave on half pay.

**15.2.** If the rate of subsistence allowance is increased or decreased after the expiry of six months of suspension the rate of dearness allowance will be recalculated on the basis of the increased or decreased amount of subsistence allowance payable from time to time. In other words the dearness allowance if admissible to the Government servant under suspension, will be equal to the amount admissible to a Government servant on leave and drawing leave salary equivalent to the subsistence allowance payable to him from time to time.

#### **16. Compensatory allowance admissible during suspension:**

A Government servant under suspension is entitled to draw other compensatory allowances *e.g.* compensatory allowance and house rent allowance, admissible from time to time on the basis of pay of which he was in receipt on the date of suspension subject to the fulfillment of other conditions laid down for the drawl of such allowances. If the headquarters of a Government servant under suspension are changed in the public interest by order of a competent authority, he shall be entitled to the allowance as admissible at the new station provided he furnishes the requisite certificate with reference to such station.

#### **17. No payment admissible to a Government servant who engages himself in other employment during suspension [See F.R. 53 (2)]:**

**17.1.** A Government servant under suspension is subject to the provisions of CCS. (Conduct) Rules, 1964, and cannot engage himself in any employment, business, profession or vocation without the prior permission of the competent authority. If he does so, he is liable to disciplinary action on that ground also.

**17.2.** Except in cases covered by para 19 a Government servant who engages himself in any employment, business, profession or vocation while under suspension will not be entitled to any payment. A Government servant under suspension should therefore, be required to furnish to the competent authority a certificate in the prescribed form every month. The certificate should be countersigned by the controlling authority in token of his having satisfied himself regarding its correctness.

**18. Rent free concession during -the period of suspension:**

**18.1.** A Government servant who has been in occupation of rent free accommodation will cease to enjoy the concession from the date of suspension. He will not be required to vacate the rent free accommodation unless the accommodation is specifically attached to any particular post. However, from the date of suspension, rent will be recovered from him on the assumption that he was not in occupation of rent free accommodation at the time of suspension *i.e.* for the purpose of recovery of rent his emoluments will be taken as laid down in F.R. 45-C (v/).

**18.2.** If subsequently such a Government servant is allowed full pay and allowances for the period of suspension the concession of rent free accommodation will stand restored and the rent if recovered for the period of suspension will be refunded to him.

**18.3.** If the period of suspension is treated as period spent on leave, the officer will be refunded the rent charged for the first month only. [The difference between rent recovered on the basis of the subsistence allowance and the rent due shall be recovered in respect of period exceeding one month.

**18.4.** If such a Government servant is made to vacate the rent free accommodation either because it is specifically attached to a particular post or for any other reason, he will not be allowed to draw house rent allowance prescribed in lieu of rent free concession. But if his headquarters, at the time of suspension is at a place at which house rent allowance is admissible to other Government servants, he will be allowed the house rent allowance at the rate(s) and subject to the conditions applicable to other Government servants. The house rent allowance will be calculated with reference to the pay that he was drawing at the time of suspension.

**19. Payments admissible to a Government servant dismissed or removed/compulsorily retired from service who is deemed to be under suspension under rule 10(3) or (4) of CCS. (CCA.) Rules, 1965:**

In the case of a Government servant dismissed, removed or compulsorily retired from service, who is deemed to have been placed or to continue to be under suspension from the date of such dismissal or removal or compulsory retirement under sub-rule (3) or sub-rule (4) of rule 10 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, and who fails to provide a certificate as required to be produced under F.R. 53(2) for any period or periods during which he is deemed to be placed or continued to be under suspension, he shall be entitled to subsistence allowance and other allowances from the date of order of dismissal/removal/compulsory retirement equal to the amount by which his earnings if any during such period or periods, as the case may be, fall short of the amount of subsistence allowance and other allowances that would otherwise be admissible to him. If the subsistence allowance and other allowances admissible to him are equal to or less than the amount earned by him, he shall not be paid any subsistence allowance. The subsistence allowance in such cases is to be paid with retrospective effect from the date of order of dismissal/removal/compulsory retirement. The law of limitation for the purpose of payment of arrears of subsistence allowance will not be invoked.

**20. Payments admissible to a Government servant suspended while on leave:**

A Government servant who is suspended while on leave will be entitled to subsistence allowance at the rate admissible and not to leave salary irrespective of whether the rate of subsistence allowance admissible is more or less than the rate of leave salary he was already drawing. The unexpired portion of his leave will be cancelled and the suspension will take effect from the date of cancellation of leave.

**21. Revision of scale of pay—Whether Government servant under suspension may be given an option to elect:**

**21.1.** When the scale of pay of a post held by the Government servant under suspension is revised and the revision takes effect from a date prior to the date of suspension, the Government servant should be allowed to exercise the option under F.R. 23 even if the date by which he is to exercise the option falls within the period of suspension. He will be entitled to the benefit of increase in pay, if any, in respect of the period before suspension and also in the subsistence allowance for the period of suspension.

**21.2.** If the revision of the scale of pay takes effect from a date falling during the period of suspension—

- (a) a Government servant who retains a lien or a suspended lien on his substantive post, should be allowed to exercise his option under F.R. 23 even while under suspension.

The benefit of option will, however, accrue to him in respect of the period of suspension only after reinstatement depending upon the fact whether the period of suspension is treated as duty or not;

- (b) a Government servant who does not retain a lien on a post the pay of which is changed, is not entitled to exercise the option under F.R. 23. However, if he is reinstated in the post and the period of suspension is treated as duty, he may be allowed to exercise the option after reinstatement. In such cases, if there is a time limit prescribed for

exercising the option and if such limit had already expired before his reinstatement, a relaxation may be made in each individual case extending the period for exercising the option.

**22. Arrangements for carrying out the work of a Government servant under suspension:**

In an establishment where provision for leave reserve exists, a vacancy caused on account of suspension of a Government servant should be filled by a reservist. Where a reservist is not available the post should be filled by an officiating appointment until such time as a reservist becomes available. It is not necessary to create an extra post.

**23. Continuance of the post held by a temporary Government servant under suspension:**

**23.1.** In the case of a temporary Government servant if the term of the post held by him at the time of suspension is likely to expire or if the post held by him, if permanent, is proposed to be abolished or if he otherwise becomes liable to be retrenched from service before the disciplinary proceedings are likely to be completed, it may be considered on merits whether—

- (a) he should be discharged from service on the expiry of the term of the post held by him, or
- (b) his services should be terminated under rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, or
- (c) the disciplinary proceedings should be continued to its logical conclusion.

**23.2.** If it is decided to continue disciplinary proceedings, the post should be continued for an appropriate period under orders where necessary of the authority competent to sanction which continuance. If delay is anticipated in obtaining sanction of the competent authority, the authority competent to dismiss or remove the Government servant concerned from service may issue orders continuing the post without reference to the competent authority. The vacancy caused by such extension should not, however, be filled.

**24. Grant of leave while under suspension:**

It is not permissible to grant leave to a Government servant under suspension under F.R. 55.

**25. Termination of the services of a temporary Government servant under suspension:**

The services of a temporary Government servant can be terminated under rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, as applied to Himachal Pradesh while he is under suspension or/and departmental proceedings are pending against him.

**26. Quarterly statement of Government .it servants under suspension:**

A quarterly statement showing the number of Government servants under suspension for more than three months should be submitted to the Vigilance Department in the Form given in appendix. The statement should be submitted by 15th of the month in which it is due. In case of Government servants continuing under suspension for more than two years, details of such cases and the reasons for continued suspension should also be given with the above statement.

**CHAPTER V**  
**PENAL PROVISIONS PERTAINING TO BRIBERY AND CORRUPTION AMONG**  
**PUBLIC SERVANTS**

**1. Definition of Public Servant:**

**1.1.** The provisions relating to offences of bribery and corruption among public servants, which are relevant for purposes of the manual are contained in section 161 to 165-A of the Indian Penal Code and in section 5 of the Prevention of Corruption Act, 1947. Persons falling under the term public servant are described in section 21 of IPC; the text of which is reproduced below;—

"21. *Public Servant.*—The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:—

FIRST.— (Repealed by the Adaptation of Laws Order, 1950);

SECOND.—Every Commissioned Officer in the Military, Naval or Air Force of India;

THIRD.—Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

FOURTH.—Every officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, e.i to take charge or dispose of any property, execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

FIFTH.—Every juryman, assessor, or member of panchayat assisting a Court of Justice or public servant;

SIXTH.—Every arbitrator other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

SEVENTH.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

EIGHTH.—Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

NINTH.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;

TENTH.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

ELEVENTH.—Every person who holds any office, by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

TWELFTH.—Every person—

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government Company as defined in section 617 of the Companies Act, 1956.

**Illustration**

A Municipal Commissioner is a public servant.

*Explanation 1.*—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

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

*Explanation 3.*—The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as "by election".

**1.2.** The section does not define the term "public servant"; it enumerates the functionaries who are to be treated as "public servant" for the purpose of the Indian Penal Code. The enumeration in various clauses of the section is not mutually exclusive. Clause "Twelfth" of the Section as amended by the Anti-Corruption Law (Amendment) Act, 1964, however, brings within its purview every person in the service or pay "of the Government or remunerated by fee or commission for the performance of any public duty by the Government and every person in the service or pay of a local authority or a body corporate established by or under a Central or a State Act or a Government Company as defined in section 617 of the Companies Act, 1956. The term "local authority" has not been defined in the Indian Penal Code but according to section 3 (31) of the General Clauses Act, 1897, the term "local authority" means "a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund". A Government company has been defined in section 617 of the Companies Act, 1956 as a "company in which not less than fifty-one per cent of the share capital is held by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments"

**1.3.** The Prevention of Corruption Act, 1947, instead of defining the term 'public servant' uses the term as defined in section 21 of the I.P.C. Section 2 of the prevention of Corruption Act, 1947, is reproduced below: -

"For the purposes of this Act, public servant means a public servant as defined in section 21 of the I.P.C."

**1.4.** A public servant who is under suspension or on leave does not cease to be a public servant.

## **2. General:**

All cases involving an offence of bribery or corruption by a public servant will be investigated by the Anti-Corruption Unit, Himachal Pradesh in accordance with the prescribed procedure. The Vigilance Department will decide whether *prima facie* evidence of commission of an offence by a public servant is available or not. It will then advise the Administrative Department and A.C.U. accordingly. If A.C.U. is asked to investigate the case then it shall require the sanction of the competent administrative authority under section 6 of Prevention of Corruption Act and in certain cases under section 197 Cr. P.C. for launching prosecution. For these consideration the broad and essential ingredients of the offences under the sections mentioned in para 1.1 above -are given in following paragraphs for the information and guidance of officers handling vigilance cases.

## **3. Sections 161 and 165 of the Indian Penal Code:**

### **3.1. Section 161, Indian Penal Code is reproduced below:—**

"161. *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 for bearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person with the Central or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in section 21, or with any public servant as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### ***Explanation***

*'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.

*'Gratification'.*—The word 'gratification' is not restricted to pecuniary gratifications, or to gratifications estimable in money.

*'Legal remuneration'.*—The words 'legal remuneration' are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government, which he serves, to accept.

*'A motive or reward for doing'.*—A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

*Illustrations*

- (a) A, a munsif obtains from Z a banker, a situation in Z's bank for A's brother .as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.
- (b) A, holding the office of Consul in a Foreign State, accepts a lakh of rupees from the Minister of that State. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that State with the Government of India. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that State. A has committed the offence defined in this section.
- (c) A, a public servant, induces Z erroneously to believe that A's influence with the Government t has obtained a title for Z and thus induces to give A money as a reward for the service A has committed the offence defined in this section,"

**3.2.** A public servant or a parson expecting to be a public servant renders himself guilty of an offence under section 161 of Indian Penal Code:—

- (i) if he accepts or obtains, or agrees to accept, or attempts to obtain from some person a gratification;
- (ii) if such gratification is not a legal remuneration due to him ;
- (iii) if he accepts such gratification as a motive or reward for—
- (a) doing or forbearing to do, an official act; or
- (b) showing, or forbearing to show, favour or disfavour to someone in the exercise of his official functions; or
- (c) rendering or attempting to render any service or disservice to any person with the Central or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company or with any public servant.

**3.3.** It is not necessary that the public servant must himself have the power or must himself be in a position to perform the actor show favour or disfavour for doing or showing which the bribery has been given to him nor is it necessary that the act for doing which the bribe is given should actual, be performed. It is sufficient if a representation is made that it has been or that it will be performed and a public servant, who obtains a bribe by making such representation renders himself guilty under this section even if he had or has not intention to perform and has not performed or does not actually perform that act. It is not necessary that favour was in fact shown to the person who offered the bribe. It is sufficient if the person giving the gratification is led to believe that the matter would go against him if he did not give the gratification. [Bhimrao I.A.R. (1925) Bombay 261].

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

**3.5.** A public servant accepting a donation for a public purpose such as a donation to a public institution or donation for any charitable or religious purpose in which he is interested would ■arajunt to an offence under this section if the motive for such payment was for showing favour to the donor in his official acts or if donation was made as a reward for a favour shown in the past. Where, however, such donation is made to public servant independently of his doing any official act, no offence is committed [Emperor vs. Tyabjee, A.I.R. (1923) Bombay 44]. Rule 12 of the CCS. (Conduct) Rules, 1964, however, prohibits Government servants from asking for or accepting contributions or collections in cash or in kind in pursuance of any object whatsoever except with the previous sanction of the Government or the prescribed authority.

**3.6.** A public servant cannot justify his acceptance of a gift or a bribe by urging that the order passed by him was nevertheless a just one and against the very person from whom he had received the bribe. It is an offence even if the act done for which the bribe is given is a just and proper one. [A. W. Chandekar A.I.R. (1925) Nagpur 313].

**3.7.** The word "motive" refers to a future act while the word "reward" to a past favour.

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

### 3.9 Section 165, Indian Penal Code is reproduced below:-

"165. *Public servant obtaining valuable thing without consideration, from person concerned in proceeding or business transacted by such public servant.* Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### *Illustrations*

- (a) A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that if the bargain were made in good faith, A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.
- (b) A, a Judge, buys of Z, who has a cause pending in A's Court, Government promissory notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.-
- (c) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium when they are selling in the market at a discount. Z-pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration ."

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

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

**3.12.** Under section 161 the gratification is taken as a motive or reward but under section 165 the question of motive or reward is not material. The mere taking of a valuable thing without consideration or for an inadequate consideration from a person having any connection with the official functions of the public servant constitutes an offence.

### 4. Sections 162 and 163 of the Indian Penal Code:

**4.1.** The text of sections 162 and 163, Indian Penal Code is given below:—

"162. *Taking gratification, in order, by corrupt or illegal means, to influence public servant.*— Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person, with the Central or any State Government or Parliament or the Legislature of any State, or with any local authority, corporation or Government Company referred to in section 21 or with any public servant as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

"163. *Taking gratification, for exercise of personal influence with public servant.*—Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing by the exercise of personal influence, any public servant to do or to forbear to do "any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person or to render or attempt to render any service or disservice to any person with the Central or any State Government or Parliament or the Legislature of any State, or with any local authority, corporation or Government Company referred to in section 21 or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine or with both."

#### *Illustration*

An advocate who receives a fee for arguing a case before a Judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust--are not within this section inasmuch as they do not exercise or profess to exercise personal influence.

**4.2.** Under sections 162 and 163 it is an offence for a person to accept any gratification as a motive or reward for improperly influencing a public servant by corrupt or illegal means or by the exercise of personal influence. Though these sections cover all persons, whether or not they are public servants, in effect their provisions will be made use of only when the offender is a person other than a public servant and such cases will not need to be dealt with by administrative authorities. If a person committing an offence under these sections is a public servant, the proper section to convict him will be section 161.

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## **5. Section 164 of the Indian Penal Code:**

### **5.1. Section 164, Indian Penal Code reads as follows :—**

"164. *Punishment for abetment by public servant of offences defined in section 162 or 163.*—Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### ***Illustration***

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both."

**5.2.** This section is intended to punish abetment by a public servant of offences mentioned in section 162 and 163 when committed in respect of the public servant himself. The *illustration* given below the section clearly explains the circumstances under which an offence under this section will arise.

## **6. Section 165-A of the Indian Penal Code:**

### **6.1. Section 165-A, Indian Penal Code reads as follows**

"165-A. *Punishment for abetment of offence defined in section 161 or section 165.*—Whoever abets any offence punishable under section 161 or section 165, whether or not that offence is committed in consequence of the abetment, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

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

**6.3.** The relevant point to consider is the state of mind of the accused when he offers a bribe or a valuable thing. As soon as there is an instigation to a public servant to commit an offence under section 161, an offence under section 165-A is complete quite irrespective of the fact whether the public servant did not accept or consent to accept the money or whether he was or he was not in a position to do the act or to show a favour or disfavour [Padam Sen vs. State, A.I.R. (1959) Allahabad 707].

## **7. Section 409 of the Indian Penal Code:**

### **7.1. Section 409 of the Indian Penal Code is reproduced below:—**

"**409.** *Criminal breach of trust by public servant etc.*—Whoever, being in any manner entrusted with property or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

**7.2.** The essential ingredients of committing an offence by a public servant under section 4091.P.C. are as follows:—

- (1) the accused must be a public servant;
- (2) he was entrusted with the property in question or with any dominion over it in the capacity of a public servant;
- (3) he committed criminal breach of trust in respect of the property in question.

**7.3.** Criminal breach of trust is defined in section 4051.P.C. Which reads as follows:—

"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."

#### *Illustrations*

- (a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.
- (b) A is a warehouse-keeper. Z, going on a journey entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.
- (c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z, to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A, to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust.
- (d) But if A, in the last *illustration*, not dishonestly but in good faith, believing that it will, be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's direction and buys shares in the Bank of Bengal for Z, instead of buying Company's paper, here though, Z should suffer loss, and should be entitled to bring civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.
- (e) A, a revenue officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.
- (f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust."

**7.4.** To constitute the offence of criminal breach of trust, three factors are essential:—

- (1) there must be an entrustment of property or dominion over property;
- (2) there must be misappropriation or conversion or use or disposal of the property in violation •
  - (a) of any legal direction;
  - (b) of any legal contract;
- (3) the misappropriation or conversion or use or disposal must be with dishonest intention.

**7.5.** The word public servant has the meaning as defined in 1.1. For the commission of an offence under this section, the public servant must be entrusted with the property or have dominion over the property alleged to have been misappropriated by the accused public servant. It is not necessary that the property should have been entrusted to the accused directly. If the accused has obtained or assumed the control of the property of another person under circumstances whereby he becomes entrusted or whereby the receipt becomes receipt for or on account of another person and fraudulently converts it or the proceeds thereof, then he has committed an offence under this section.

### **8. Section 5 of the Prevention of Corruption Act, 1947:**

A copy of the Prevention of Corruption Act, 1947 as amended up-to-date is given in the Appendix.

Section 5 (1) of the Act provides for an offence of "criminal misconduct", in the case of a public servant. This is a new offence which is not mentioned in the Indian Penal Code.

### **9. Section 5 (1) (a) and (b) of the Prevention of Corruption Act, 1947:**

**9.1.** Clause (a) of section 5(1) provides that if a public servant habitually accepts or attempts to obtain any illegal gratification as a motive or reward, as mentioned in section 161 of the Indian Penal Code, he is guilty of criminal misconduct. Clause (b) provides that if a public servant habitually accepts or attempts to obtain any valuable thing, without price for price which he knows to be inadequate, from any person who has or is likely to have some official business with him or with an officer to whom he is subordinate, he is guilty of criminal misconduct.

**9.2.** The offences specified under clauses (a) and (b) of section 5 (1) of the Prevention of Corruption Act have the same ingredients as those specified in sections 161 and 165 of Indian Penal Code. The fundamental difference between the provisions of the two Acts is that offences under the Prevention of Corruption Act are an aggravated form of those provided for in the Indian Penal Code. Whereas under sections 161 and 165 of the Indian Penal Code a prosecution can be laid even in the case of a single act of acceptance of illegal gratification, there must be habitual commission of the offence to attract clauses (a) and (b) of section 5 (1) of the Prevention of Corruption Act. Another point of difference is that, while the Prevention of Corruption Act prescribes punishment of imprisonment from a minimum of one year and up to maximum of seven years, the Indian Penal Code lays down the maximum period of imprisonment as three years without prescribing any minimum limit.

### **10. Section 5(1) (c) of the Prevention of Corruption Act, 1947:**

**10.1.** This clause provides that if a public servant dishonestly or fraudulently misappropriates himself or allows any person to misappropriate any property entrusted to him in his official capacity, he is guilty of criminal misconduct.

**10.2.** The offence mentioned in this clause is analogous to that mentioned in section 409 of Indian Penal Code. However, whereas under section 409 of the Indian Penal Code, a public servant is guilty only if he commits the criminal breach of trust himself, under clause 5 (1) (c) of the Prevention of Corruption Act he is guilty whether he himself misappropriates or allows any other person to misappropriate property entrusted to him in his official capacity. Another difference between the two sections is that while under section 409 of the Indian Penal Code no minimum punishment is prescribed and the maximum punishment may be imprisonment for life or imprisonment which may extend to 10 years, the minimum punishment under section 5 of the Prevention of Corruption Act is one year and the maximum seven years.

**10.3.** In cases which fall both under section 409, Indian Penal Code and under clause (c) of section 5 (1) of Prevention of Corruption Act, prosecuting agency may charge the public servant under the Indian Penal Code or under the Prevention of Corruption Act as it may consider appropriate in each case. The gravity of the offence and other relevant matters will need to be taken into consideration in exercising the discretion. If the facts disclose the commission of a serious offence for which the maximum punishment provided for under the Prevention of Corruption Act is not sufficient, the accused may be charged under section 409 of Indian Penal Code which provides for a severe punishment for the same kind of offence. The public servant may also be charged simultaneously both under section 409 of the Indian Penal Code and section 5 (1) (c) of the Prevention of Corruption Act, 1947. The advantage of such combination will be that in the event of conviction the punishment to be awarded by the Court will be subject to a minimum of one year as prescribed in the Prevention of Corruption Act and the maximum may go up to a term of imprisonment upto ten years as prescribed in the Indian Penal Code.

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

### **11. Section (5) (1) (d) of the Prevention of Corruption Act, 1947:**

This clause provides that if a public servant by corrupt or illegal means or by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage, he is guilty of criminal misconduct. This offence of obtaining a valuable thing or pecuniary advantage, by misuse of official position is a new offence hitherto not provided for in the Indian Penal Code. 'Motive or reward' has no relevance for an offence under this clause. It is enough if it is proved that the public servant has obtained a valuable thing or a pecuniary advantage by abusing his official position.

### **12. Section 5 (1) (e) of the Prevention of Corruption Act, 1947:**

This clause has been added by the Criminal Law (Amendment) Act, 1964. It provides that if a public servant or some person on his behalf is or has at any time during the period when public servant was in office, been in possession of assets disproportionate to his known source of income for which the public servant cannot satisfactorily account, he is guilty of

criminal misconduct. Before clause (e) was introduced in 1964, if the prosecution was able to prove that a public servant or any other person on his behalf was in possession of pecuniary resources or property disproportionate to his known sources of income for which the accused person cannot satisfactorily account, the Court was to presume that the public servant was guilty of criminal misconduct. The new clause makes possession of such assets itself a substantive offence of criminal misconduct.

### **13. Presumption of guilt of the accused:**

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

**13.2.** Section 4 of the Prevention of Corruption Act, 1947, introduces a new concept of justice inasmuch as it makes it obligatory for the court to make certain presumptions against the accused. When it has been proved that the accused who is charged of an offence under section 161 or 165 or 165-A of Indian Penal Code has received any gratification other than legal remuneration or any valuable thing without adequate consideration, the court is 'bound to presume under section 4 (1) of the Prevention of Corruption Act that the gratification or the valuable thing was received with a motive or as a reward as is mentioned in section 161 of the Indian Penal Code. All that the prosecution has to prove is the mere receipt of gratification or the valuable thing by the accused, or when receipt of such gratification or valuable thing by the accused, or when receipt of such gratification or valuable thing is admitted by the accused, the prosecution is not required to prove affirmatively anything more to show that the gratification was received as a bribe or illegal gratification. If the accused wants to suggest that he had not accepted the gratification or the valuable thing with the motive or as a reward for exercising any official favour or disfavour, it would be for him to establish that.

**13.3.** To raise the presumption under section 4 (1) of Prevention of Corruption Act, the prosecution has to prove that the accused has received "gratification other than legal remuneration". When it is shown that the accused has received a certain sum of money which was not his legal remuneration, the condition prescribed by the section is satisfied and the presumption must be raised. Further the mere receipt of "money" is sufficient to raise the presumption (*V.D. Jhingan vs. State of U.P.* A.I.R. 1966 S.C. 1672).

**13.4.** An impression may be created in some quarters that in view of the presumption u/s 4 (1) of the Prevention of Corruption Act, the task of prosecution has become very easy inasmuch as whenever receipt of money is proved the authority deciding to launch a prosecution or grant sanction u/s 6 of the Prevention of Corruption Act, need not concern itself with the probable defense of the accused person. Nothing could be further from facts. The Supreme Court in *Jhingan's* case has clarified that the burden of proof lying upon the accused under S. 4 (1) of the Prevention of Corruption Act will be satisfied if he establishes his case by a preponderance of probability as is done by a party in Civil proceedings. It is not necessary that he should establish his case by the test of proof beyond a reasonable doubt. Consequently before launching prosecution one has to rule out a possibility of defense put up by the accused person which, if proved, may amount to preponderance of probability in his favour and it must be clearly understood that the quantum of proof expected of the accused is less than that expected from the prosecution which has to prove the case beyond a reasonable doubt. The Supreme Court in *Harbhajan Singh vs. State of Punjab* had reiterated this principle thus—

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

**13.5.** Under section 4 (2) of the Prevention of Corruption Act, a similar presumption is to be made against the accused charged under section 165-A of the Indian Penal Code or under section 5 (3) (ii) of the Prevention of Corruption Act, 1947, as soon as it is proved that any valuable thing had been given or attempted to be given to a public servant.

**13.6** The only exception when such presumption may not be drawn by the court is provided for in sub-section (3) of section 4 of the Prevention of Corruption Act, 1947, which lays down that the court may decline to draw the presumption if the gratification in its opinion is so trivial that no inference of corruption could fairly be drawn.

### **14. Accused to be competent witness:**

Under section 7 of the Prevention of Corruption Act, 1947, a person charged under section 161 or 165 or 165-A of Indian Penal Code or under section 5 of the Prevention of Corruption Act, is a competent witness for his defense and can give evidence on oath in disproof of the charges made against him or against a co-accused.

## CHAPTER-VI PROSECUTION

### 1. Sanction for Prosecution :

**1.1.** Under section 6 of the Prevention of Corruption Act, 1947, it is necessary for the prosecuting authority to have the previous sanction of the appropriate administrative authority for launching prosecution against a public servant. For ready reference the text of the section is reproduced below:—

"6. *Previous sanction necessary for prosecution—*

- (1) No court shall take cognizance of an offence punishable under section 161 or section 164 or section 165 of the Indian Penal Code or under sub-section (2) or sub-section (3A) of section 5 of this Act alleged to have been committed by a public servant, except with 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 the Central Government ;
  - (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from the office, save by or with sanction of the State Government, of the State 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 whether the previous sanction as required under sub-section (1) should be given by the Central or State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed."

**1.2.** Prior to the enactment of the Prevention of Corruption Act, 1947, the prosecution of a public servant was subject to the provisions of section 197(1) of the Code of Criminal Procedure, 1973. This section reads as follows:—

SECTION 197 CR. P.C.—Under section 197 (1) the sanction of the Central or of a State Government was necessary for the prosecution of only such public servants as were not removable from their offices save with the sanction of the respective Government. No sanction is required under that section to prosecute a public servant removable by a lower authority. After the enactment of the Prevention of Corruption Act, 1947, the prosecution of any public servant, however, subordinate, who is alleged to have committed an offence under section 5 of that Act and/or under section 161, 164 and 165 of the Indian Penal Code requires the previous sanction of the appropriate administrative authority. But prosecution sanction is not required while prosecuting a Government servant who is removable without the sanction of the Government concerned, who is alleged to have committed an offence under section 409 I.P.C.

### 2. Need for sanction :

**2.1.** The 3 requirement of previous sanction is intended to afford a reasonable protection to a public servant, who in the course of strict and impartial discharge of his duties may offend persons and create enemies, from frivolous, malicious or vexatious prosecution and to save him from unnecessary harassment or undue hardship which may result from an inadequate appreciation by police authorities of the technicalities of the working of a department. The prosecution of a Government servant for an offence challenging his honesty and integrity has also a bearing on the morale of the public services. The administrative authority alone is in a position to assess and weigh the accusation on the basis of the background of their own intimate knowledge of the\* work and conduct of the public servant and the overall administrative interest of the State.

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

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

**2.4.** The protection of previous sanction is available under section 6 of the Prevention of Corruption Act only to a person who was a public servant when the offence was committed and also when a court is asked to take cognizance of the offence. The provisions of the section will not be attracted if the accused was not at the time of the commission of the alleged

offence a public servant but was merely expecting to be a public servant. Similarly, previous sanction under this section will not be required in the case of a person who was a public servant at the time of the commission of the offence but who had ceased to be so at the time when the court was asked to take cognizance of it.

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

### **3. Authority competent to sanction prosecution:**

**3.1.** Under section 6 (1) of the Prevention of Corruption Act, 1947, the authority competent to sanction prosecution will normally be—

- (a) in the case of a Central Government servant who is employed in connection with the affairs of the Union and is removable from his office by the Central Government—Central Government;
- (b) in the case of a State Government servant who is employed in connection with the affairs of the State and is removable from his office by the State Government—State Government;
- (c) in the case of any other public servant—authority competent to remove him from his office.

The words "is employed" used in section 6 (1) and "is not removable" in clauses (a) and (b) "competent to remove him from his office" used in clause (c) are significant and clearly show that the authority contemplated in section 6 is the one competent to remove the public servant holding the office on the date when the court is asked to take cognizance of the offence and not any public servant holding the office held by the accused.

**3.2.** Clauses (a) and (b) above will apply to persons who are employed in connection with the affairs of the Union or in connection with the affairs of a State and are removable from office by the Central Government or by the State Government, respectively. Government employees or other public servants who do not fall in these two categories, for example, a Government Servant who is removable from his office by an authority lower than the Central or the State Government will fall under clause (c) and the authority competent to remove him from service will be the authority competent to sanction prosecution. The case of a Government servant whose services have been lent by one Government to another will also fall under clause (c) and the authority competent to sanction the prosecution will be the authority competent to remove such Government servant service, which may be either the Central Government or the State Government or an authority lower than the Central or the State Government, as the case may be. The expression "State Government" by virtue of section 3 (60) (c) of the General Clauses Act, 1897, means the "Governor".

**3.3.** Sub-section (2) of section 6, which was inserted by the Prevention of Corruption (Second Amendment) Act, 1952, further provides that where for any reason whatsoever any doubt arises as to whose previous sanction should be obtained under sub-section (1), the sanction shall be given by the authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

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

### **4. Sanction for prosecution under section 409, Indian Penal Code:**

If a public servant is charged under section 409 of Indian Penal Code, the requirement of previous sanction as prescribed in section 6 of the Prevention of Corruption Act will not apply. However, if such accused public servant cannot be removed from his office except by an order of the Central or State Government, sanction for his prosecution will be required under section 197 of Criminal Procedure Code.

### **5. Form of sanction:**

**5.1.** In the Prevention of Corruption Act, 1947, no particular form or a set of words has been prescribed in which the sanction to prosecution need be set out. The sanction, however, represents a deliberate decision of the competent sanctioning authority. The Courts expect that a sanction, for which no particular form has been prescribed by law, should *ex-facie* indicate that the sanctioning authority had before it all relevant facts on the basis of which prosecution was proposed to be launched and had applied its mind to all the facts and circumstances of the case before according its sanction.

**5.2.** It is no doubt permissible to prove by evidence that the competent authority had applied its mind to the facts of the case. However, to avoid delays and expense and for the sake of convenience and uniformity of practice two standard forms have been drawn up for the purpose which are given in the appendix.

#### **6. Fresh sanction after re-investigation:**

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

#### **7. Authentication of sanction issued by Central/State Government:**

**7.1.** Where the sanction is issued by the Central Government, it will be authenticated by the signature of an officer who is authorised under Article 77 (2) of the Constitution to authenticate orders and other instruments made and executed in the name of the President. Where the sanction is issued by the State Government, it will be authenticated by the signatures of an officer who is authorised, under Article 166 of the Constitution to authenticate orders and other instruments made and executed in the name of the Governor.

**7.2.** The validity of a sanction issued by the Central or State Government may be proved by the prosecution by the production of the following documents in the Court H-

- 0) the original order of sanction;
- (H) a copy of the notification issue under Article 77 (2) of 166 of the Constitution referred to above;
- (iii) a copy of the Gazette notification relating to the appointment of the officer signing the order to the office held by him at the time of the issue of the order of sanction.

#### **8. Authentication of sanction issued by other competent authority:**

**8.1.** Where the sanction is to be issued by other competent authority, the order of sanction will be signed by the officer who is competent to remove the accused public servant from his office at the time when the offence is to be taken cognizance of by the court; if the sanction is to be accorded under section 6 (1) or by the officer who was competent to remove him from office at the time when the offence was committed if the order is to be issued under section 6 (2).

**8.2.** The validity of such sanction may be proved by the prosecution by production of the following documents in the court:—

- (i) the original order of sanction;
- (ii) a copy of the Gazette notification relating to the appointment of the officer signing the sanction to the office held by him at the time of the issue of the sanction by virtue of which he is competent to issue the order of sanction or the order of appointment in the case of an officer whose appointment is not notified in the Gazette.

#### **9. Proof of signature:**

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

#### **10. Investigation by the Anti-Corruption Unit:**

As a general rule allegations involving offences punishable under section 5 of P.C. Act, 1947 and sections 161 to 165-A and 409 of I.P.C. will be investigated, at the instance of administrative authority or as a result of information gathered through their own sources, by the Anti-Corruption Unit, Himachal Pradesh.

#### **11. Procedure for obtaining sanction of the State Government:**

In all cases investigated by the Anti-Corruption Unit against public servants in which prosecution sanction is required to be accorded by the competent authority under section 6 of P.C. Act, 1947 or section 197 of Code of Criminal Procedure prior to the launching of prosecution of the public servant Superintendent of Police, Anti-Corruption Unit, will forward the final report of investigation to the Vigilance Department. While forwarding the report of the investigation, the Superintendent

of Police, (Anti-Corruption Unit), will also forward to the Vigilance Department, such original documents as can be sent after retaining copies if necessary. In respect of the documents which the Anti-Corruption Unit will not like to part with attested copies or gist of their contents may be sent instead. The Vigilance Department will then examine the investigation report of Anti-Corruption Unit and will forward its advice along with the investigation report to the competent authority. In case the competent authority differs with the advice tendered by the Vigilance Department then it should refer the case back to the Vigilance Department for reconsideration. In case the authority competent to grant prosecution sanction wants to see the original documents, the Anti-Corruption Unit may be requested to make them available for inspection. If there are any documents which are not capable of being copied or even a gist of which cannot be prepared, the administrative authority may inspect such documents by arrangements with the Anti-Corruption Unit. Then the competent authority should pass a formal order granting prosecution sanction and communicate it to Superintendent of Police (A.C.U.) under intimation to the Vigilance Department.

#### **12. Action after judgment:**

As soon as the judgment is pronounced a report about conviction will be sent by the Anti-Corruption Unit to the Administrative Department concerned and to the Vigilance Department. The Anti-Corruption Unit will also take immediate steps to obtain a copy of the judgment and to forward copies of it to the authorities mentioned above. While doing so the Anti-Corruption Unit may give their comments,- if any, on any matters arising out of the judgment.

#### **13. Action on conviction:**

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

**13.2.** As soon as a copy of the judgment convicting the accused is received from the Anti-Corruption Unit the Vigilance Department would consider the course of further departmental action to be taken against the accused public servant and advise the appropriate disciplinary authority accordingly.

**13.3.** If the disciplinary authority after consultation with the Vigilance Department comes to the conclusion that the offence for which the public servant has been convicted was such as to render his retention in the public service *prima facie* under sirable, it can impose upon him under rule 19 0) of the CCS. (C.C. & A.) Rules, 1965, the penalty of dismissal or removal or compulsory retirement from service, as may be considered appropriate, with reference to the gravity-of the offence, without holding any enquiry or giving him a show cause notice as provided in proviso to Article 311 (2) of the Constitution.

**13.4.** In a case in which the offence for which a Government servant has been convicted is not considered such as to render his retention in public service *prima facie* undesirable, the appropriate disciplinary authority after consultation with the Vigilance Department may impose any of the penalties, other than those of dismissal, removal or compulsory retirement from service. Specified in rule 11 of the CCS. (C.C. & A.) Rules, 1965, as may be considered appropriate, under rule 19 (») of the rules without holding any further enquiry or giving the public servant concerned a show cause notice.

**13.5.** Action to impose any of the penalties referred to in sub-paragraphs 13.3 and 13.4 above should not taken be before the period for filing an appeal has elapsed or, if an appeal has been filed, before the appeal has been decided in the first court of appeal. In counting the period for filing appeal, time taken for getting the copies of Court's decision is not to be counted. The disciplinary authorities should make arrangements for getting the result of the first appeal very promptly and take due action thereafter without delay and without enquiring whether the Government servant concerned has or intends to file a second appeal. If, however, a restraining order from an appellant Court is produced action has to be with held of taken according to the Court's direction.

#### **14. Consultation with Himachal Pradesh Public Service Commission:**

**14.1.** In cases where the State Public Service Commission has to be consulted, a reference to the Commission should ordinarily be made after the period for filing an appeal has elapsed or if an appeal has been filed after the appeal has been decided in the first court of appeal.

**14.2.** However, in a case in which Government are legally advised that there is little chance of conviction being reversed in appeal, the reference to the State Public Service Commission may be made without waiting for the expiry of the

period for filing an appeal. The Commission, may, however, suggest even in such a case that their advice may be sought only after the judgment of the first appellate court is known or after the expiry of a period of appeal, if no appeal has been filed.

#### **15. Action after acquittal:**

**15.1.** In cases in which a public servant is acquitted by the trial court, the judgment will be examined by the Anti-Corruption Unit in consultation with the Public Prosecutor concerned to consider whether an appeal or an application for revision should be filed in the first court of appeal. If the Anti-Corruption Unit comes to the conclusion that such an appeal or an application for revision should be filed, a copy of the judgment together with the copy of the comments of the Anti-Corruption Unit and the Public Prosecutor concerned will be forwarded by them to the Vigilance Department. If the Vigilance Department agree with the recommendation of the Anti-Corruption Unit then the Vigilance Department will forward to the State Government a certified copy of the judgment and its comments for filing an appeal or revision, as the case may be. A copy of such reference will be endorsed by the Vigilance Department to the Anti-Corruption Unit. The administrative Department may also be kept informed of the developments.

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

**15.3.** If the Government servant is acquitted by the first appellate court, the Vigilance Department will decide whether the acquittal should be challenged further in the higher court, and if it is so decided, action to institute proper proceedings will be taken by it.

**15.4.** If the conviction is upheld by the appellate court, further action should be taken as outlined in para 15.

#### **16. Departmental action after acquittal:**

**16.1.** If the Government servant is acquitted by trial or appellate court and if it is decided that the acquittal should not be challenged in a higher court, the competent authority should decide in consultation with the Vigilance Department whether or not the facts and circumstances of the case are such as to call for a departmental enquiry on the basis of the allegations on which he was previously charged and convicted.

**16.2.** One identical set of facts and allegations may constitute a criminal offence as well as misconduct punishable under the CCS. (C.C & A.) Rules or other corresponding rules. If the facts or allegations had been examined by a court of competent jurisdiction and if the court held that the allegations were not true, it will not be permissible to hold a departmental enquiry in respect of a charge based on the same facts or allegations. If, on the other hand, the court has merely expressed a doubt about the correctness of the allegations, a departmental enquiry may be held into the same allegations if better proof than what was produced before the court is forthcoming.

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

**16.4.** A departmental enquiry may be held after acquittal in respect of a charge which is not identical with or similar to the charge in the criminal case in the prescribed form.

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

#### **17. Setting aside the orders of penalty:**

If an appeal or application for revision filed by a Government servant against his conviction in a court higher than the first court of appeal succeeds, the order imposing any penalty which may have been passed on the basis of earlier conviction (*vide* para 14.1), should be set-aside, if it is decided not to challenge the acquittal in the higher court. Such penalty should be set aside even in cases where it is decided to start disciplinary proceedings against such a Government servant (*vide* para 16). Order setting aside the penalty may be made in the standard form.

#### **18. Withdrawal of prosecution:**

**18.1.** Once a case has been put in a court, it should be allowed to take its normal course. Proposal for withdrawal of prosecution may, however, be initiated by the Anti-Corruption Unit on legal considerations. In such cases the Anti-Corruption Unit will forward its recommendations to the Vigilance Department and to the administrative department

concerned by which prosecution sanction was accorded. The Vigilance Department will consult the Law Department and will decide as to the further course of action in such cases.

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

**19. Progress reports and statistical returns about prosecution cases:**

Administrative departments are required to submit to the Vigilance Department quarterly returns showing progress made in disposal of cases pending in courts in proforma V-4. unnecessary delays should be pointed out to the Vigilance Department so that it can take appropriate measures for the early disposal of such cases. These returns are to be submitted by 16th April, 16th July, 16th October and 16th January.

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## CHAPTER -VII

### ■ACTION AGAINST TEMPORARY GOVERNMENT SERVANTS

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

The conditions of service of temporary Government servants are, in certain matters, governed by the Central Civil Services (Temporary Service) Rules, 1965, as applied to Himachal Pradesh. A copy of the rules is given in section A (6) of Volume II. In matters pertaining to disciplinary control, the provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, apply to temporary Government servants also.

#### 2. Termination of services of temporary Government servant by the appointing authority:

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

**2.2.** The services of such a Government servant can also be terminated by the appointing authority forthwith by paying him a sum equivalent to the amount of his pay and allowances for the period of the notice at the rates at which he was drawing them immediately before the termination of his service.

**2.3.** If for any reason it is considered that the services of a Government servant, who had already been served with a notice, should be terminated forthwith, the competent authority may do so by paying him pay and allowances for the unexpired period of the notice.

**2.4.** In case of persons appointed on probation, wherein the appointment letter a specific condition regarding termination of service without any notice during or at the end of the period of probation (including extended period, if any) it would be desirable to terminate the services of the person appointed on probation in terms of the letter of appointment and not under rule 5) (1) of the Temporary Service Rules.

#### 3. Services may be terminated for any reason:

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

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

#### 4. Termination of services for misconduct:

As soon as the need for taking action against a temporary Government servant for any reason becomes apparent, the competent authority should after considering the circumstances of each case, decide whether disciplinary proceedings should be taken against him under the provisions of the Central Civil Services (Classification, Control and Appeal) Rules or whether it would be in the public interest to terminate his services under rule 5 (1) of the CCS. (T.S.) Rules. In cases where, for example a minor penalty would be a sufficient punishment it may be considered appropriate 'to take disciplinary proceeding against him rather than terminating his services. On the other hand in a case where gross misconduct has been committed, it may be considered more desirable to take disciplinary action with a view to inflicting the punishment of dismissal or removal than merely to terminate his services which carries no other disability. Termination of services may also be resorted to when the competent authority is satisfied about the guilt or misconduct of the Government servant but the available evidence is not sufficient for proving it in formal proceedings which may take a long time to conclude during which the Government servant if placed under suspension, will need to be paid subsistence allowance.

### 5. Authority competent to terminate services:

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

### 6. Termination of services during the pendency of disciplinary proceedings:

**6.1. Termination of services after preliminary enquiry.**—The Supreme Court in *Champak Lal, Chaman Lai Shah vs. Union of India* (C.A. No. 472 of 1962) examined the scope of the preliminary enquiry that could be held before the services of a temporary Government servant are terminated or a probationer is discharged. The Supreme Court observed as follows:—

"Generally therefore a preliminary enquiry is usually held to determine whether a *prima facie* case for a formal departmental enquiry is made out, and it is very necessary that the two should not be confused. Even where Government does not intend to take action by way of punishment against a temporary servant on a report of bad work or misconduct a preliminary enquiry is usually held to satisfy Government that there is reason to dispense with the services of a temporary employee or to revert him to his substantive post, for as we have said already government does not usually take action of this kind without any reason. Therefore, when a preliminary enquiry of this nature is held, in the case of a temporary employee or a Government servant holding a higher rank temporarily it must not be confused with the regular departmental enquiry (which usually follows such a preliminary enquiry) when the Government decides to frame charges and get a departmental enquiry made in order that one of the three major punishments already indicated may be inflicted on the Government servant. Therefore, so *f&V* as the preliminary enquiry is concerned there is no question of its being governed by Article 311 (2) for that enquiry is really for the satisfaction of Government to decide whether a punitive action should be taken or action should be taken under the contract or the rules in the case of a temporary Government servant or a servant holding higher rank temporarily to which he has a no right. In short a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a Government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned, to the enquiry necessary under Article 311 for inflicting one of three major punishments mentioned therein. Such a preliminary enquiry may even be held *ex-parte* for it is merely for the satisfaction of Government, though usually for the sake of fairness, explanation is taken from the servant concerned even at such an enquiry. But at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the Government and it is only when the Government decides to hold a regular departmental enquiry for the purposes of inflicting on the Government servant one of the three major punishments indicated in Article 311 and all the rights that the protection implies as already indicated above. There must therefore be "no confusion between the two enquiries and it is only when the Government proceeds to hold a departmental enquiry for the purpose of inflicting on the Government servant one of the three major punishments indicated in Article 311 that the Government servant is entitled to the protection of that Article. That is why this Court emphasized in *Parshotam Lai Dhingra's* case and in *Shyam Lai VJ. The State of Uttar Pradesh* that the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule is irrelevant."

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

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

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

**6.2. Termination of service during pendency of departmental proceedings.**—If formal disciplinary proceedings have been initiated against a temporary Government servant and the competent authority after careful consideration comes to the conclusion subsequently that instead of continuing the proceedings, it would be expedient to terminate his services under rule 5 (1) of the CCS. (T.S.) Rules, 1965, action can be taken to terminate his services by giving him a notice of termination of services or by paying him pay and allowances in lieu of the prescribed notice. Termination of service during suspension for misconduct pending departmental enquiry is not illegal and does not attract provisions of Article 311 (2) of the Constitution.

**6.3.** *When the Government servant is under suspension.*—If the Government servant whose services are proposed to be terminated under rule 5 (1) of CCS. (T.S.) Rules, 1965, is under suspension, it is not necessary to reinstate him before taking such action. The competent authority can terminate his services forthwith by paying him full pay and allowances in lieu of the prescribed notice at the same rates as he was drawing immediately proceedings suspension. For the period of suspension the Government servant is not legally entitled to full salary and allowances and he need not be paid anything more than what he has already been paid as subsistence allowance.

#### **7. Termination of services of a temporary Government servant being prosecuted in a Court of Law:**

These services of a temporary Government servant against whom prosecution has been launched in a Court of Law can be terminated during the pendency of criminal case if it is considered expedient or advisable to do so instead of keeping him under suspension till the conclusion of the case, it may, for example, be considered advisable to terminate the services of a temporary Government servant who if convicted for the offence for which he is being prosecuted, will be unsuitable for further retention in Government service and who according to legal advice has no chance of acquittal. In such case, the temporary Government servant will not be entitled, for the period of suspension, to anything more than the subsistence allowance already paid to him.

#### **8. Forms:**

The notice of termination of services under rule 5 (1) of CCS. (T.S.) Rules should not give any indication of the reasons or circumstances leading to the termination. To ensure the use of correct terminology, three forms of notice have been given in the appendix which may be used *b*) the competent authority according to the circumstances of each case.

#### **9. Service of Notice:**

**9.1.** The date of issue of notice is not sufficient for calculating the period of notice. The Supreme Court in *K. Narasimhiah v.s. H. C. Singri Godou* has observed that "giving" is no equivalent to "sending" and there is no authority or principle for the proposition that as soon as the person with the legal duty to give the notice dispatches the notice to the address of the person to whom it has to be given, the giving is complete. In view of this judgment of the Supreme Court, the period of notice should commence from the date the notice is served on, or tendered to, the Government servant.

**9.2.** When the Government servant concerned is on duty the notice should be served on him as far as possible personally and his acknowledgement obtained.

**9.3.** However, in cases in which it is not possible to effect such personal service, *e.g.* when the Government servant is posted at a place other than the headquarters of the appointing authority or when he is on leave, the notice may be sent by registered post. If the notice is received back un-served with the endorsement "refused", no further attempt to serve the notice need be made and a refusal of communication sent under registered cover amounts in law to a valid service.

#### **10. Review of cases:**

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

**10.2.** Except in special circumstances to be recorded in writing, no case under this rule can be reopened after the expiry of three months—

- (i) from the date of notice, in case where a notice is given ; or
- (ii) from the date of termination of services in a case where no notice is given.

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

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

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

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

**10.6.** If the competent authority decides to reinstate the Government servant, the order of reinstatement should specify:

- (i) the amount or proportion of pay and allowance, if any, to be paid to the Government servant for the period of his absence between the date of termination of service and the date of reinstatement;
- (ii), whether the said period shall be treated as a period spent on duty for any specified purpose or purposes.

**11. Notice of termination of services by a temporary Government servant:**

**11.1.** A temporary Government servant can give notice to the appointing authority under rule 5 (1) of the C.C.S. (T.S.) Rules, 1965, of his intention to terminate his services.

**11.2.** If a temporary Government servant submits a letter of resignation in which he does not refer to rule 5 (1) of the C.C.S. (T.S.) Rules or does not even mention that the letter of resignation be treated as notice of termination of service, the provisions of rule 5 (1) *ibid* will not be attracted and the letter of resignation may be dealt with by the competent authority. Such a temporary Government servant can relinquish his post only when his resignation is accepted and he is relieved of his duties.

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

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

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

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

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

**11.8.** If the temporary Government servant who gives notice is one who is alleged to have committed a criminal offence for which it is proposed to prosecute him, he can be prosecuted even after the termination of services. If the notice is given by a Government servant during the pendency of prosecution against him in a court of law, the prosecution will continue even after the termination of services.

## CHAPTER-VIII CONSTITUTIONAL PROVISIONS

### 1. General:

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

### 2. Power to make rules governing conditions of service:

#### 2.1. Article 309 of the Constitution reads as follows:—

"309. *Recruitment and conditions of service of persons serving the Union or a State.*—• Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

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

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

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

- (i) The CCS. (Conduct) Rules, 1964.
- (ii) The CCS. (CCA.) Rules, 1965.
- (iii) The CCS. (T.S.) Rules, 1965.

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

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

3.2. *All-India Services.*—Under Article 312 of the Constitution Parliament has enacted the All-India Services Act, 1951. Under section 3 of that Act, the President has framed rules regulating various aspects of conditions of services of persons appointed to the All-India Services. The three

All-India Services created so far are the I.A.S., the I.P.S, and the Indian Forest Service. The two more All-India Services viz., the India Service of Engineers (Irrigation, Power, Buildings and Roads) and the Indian Medical and Health Service are in the process of being created. The rules relating to them which are relevant for the present purpose are the All-India Services (Conduct) Rules, 1954 and the All-India Services (Discipline and Appeal) Rules, 1955.

3.3. *Secretariat staff of the Vidhan Sabha.*—Article 187 (2) of the Constitution empowers the State Legislature to regulate by law the recruitment and conditions of service of persons appointed to the Secretariat staff of the State Legislature. However, no such law has yet been made by H.P. Vidhan Sabha. Article 187 (3) empowers the Governor of a State in consultation with the Speaker of the State Legislature to make rules regulating the recruitment and conditions of service of persons appointed to the Secretariat of the State Legislature. Under this Article, the Governor of Himachal Pradesh in consultation with the Speaker of the Vidhan Sabha has made the Himachal Pradesh Vidhan Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1974. Recruitment etc. of the staff of Vidhan Sabha is governed by these rules.

**3.4. Officers of the High Court.**—Under Article 229 (2) of the Constitution, conditions of service of officers and servants of the High Court are regulated by rules made by the Chief Justice subject to the approval of the Governor in certain matters.

**4. Persons engaged on special contract:**

On occasions the Government engages the services of specialists or experts or other persons for a specified period on special terms embodied in a special contract of service. Such contract would normally provide *inter alia* for the duration of appointment and for conditions regarding termination of service. In some cases the contract may expressly provide that in certain specified matters the conditions of service of the person appointed on contract will be governed by specific rules governing Government servants in these matters. In certain other cases the rules governing the conditions of service of Government servant may be made applicable to a person appointed on a contract by a general reference to them.

**5. Alterations in conditions of service:**

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

**5.2.** The power to make rules conferred by Article 309 of the Constitution or by other statutes includes the power to add, amend or alter the rules by virtue of Article 367 of the Constitution and section 21 of the General Clauses Act, 1897. Accordingly, so long as the constitutional provisions are not contravened, the rules governing the conditions of service of Government servants can be altered or amended by the Government from time to time according to the exigencies of the public service without the consent of a Government servant concerned who will be bound by such amendment or alterations in the rules. The Privy Council in *Venkata Rao's case* (A.I.R. 1937 P.C. 27) observed that rules which are manifold in numbers and most minute in particularity are all capable of change from time to time. The Supreme Court also in *Grewal's case* (A.I.R. 1959 S.C. 512) observed that numerous rules relating to conditions of service may have to be changed from time to time as the exigencies of public service require. There is no question of consent of the Government servant concerned at least by reason of the sheer impossibility of securing such consent from every one. It is also open to the Government to alter service rules retrospectively which may affect even the existing incumbents adversely. However, the existing incumbents are generally given protection with a view to avoiding hardship to them. The rights accruing to a Government servant under the conditions of service in force at the time of his retirement cannot be taken away after his retirement.

**6. Alterations in the conditions of service of persons appointed on contract:**

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

**7. Employees of departmental public undertakings:**

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

**8. Employees of public sector undertakings:**

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

## 9. Tenure of service:

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

## 10. Article 310 of the Constitution (Doctrine of pleasure):

### 10.1. Article 310 of the Constitution reads as follows:—

"310. *Tenure of office of persons serving the Union or a State.*—(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or an All-India Service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

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

**10.2.** The above Article provides that an employee of the Himachal Pradesh Government holds office during the pleasure of the Governor of Himachal Pradesh and therefore his tenure could be terminated by the Governor of Himachal Pradesh at pleasure. Practically, all Government servants are covered by this Article.

**10.3.** The exercise of the pleasure is, however, subject to the express provisions of the Constitution made in relation to certain special services and posts and to the provisions of Article 311 which lays down, in relation to holders of posts covered by that Article, the manner in which the services of a Government servant could be terminated. In that sense the requirements of Article 311 are of the nature of a proviso to Article 310 is thus controlled and regulated by the provisions of Article 311 (A.T.R. 1958 S.C. 36).

## 11. Article 311 of the Constitution:

### 11.1. Article 311 of the Constitution reads as follows:—■

"311. *Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.*—

- (1) No person who is a member of a civil service of the Union or an All-India Service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.
- (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, unit he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry:

Provided that this clause shall not apply—

- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;
- (b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry;
- (c) where the President or Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.
- (3) If, in respect of such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred loin clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

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

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

## **12. Dismissal, removal and reduction in rank:**

**12.1.** It is well understood that the three terms "dismissal", "removal" and "reduction in rank" used in the context of disciplinary proceedings have acquired a special connotation as signifying the three major punishments which can be inflicted upon Government servants under the CCS. (CCA.) Rules or under other corresponding service rules in accordance with the procedure prescribed in these rules. The Constitution uses them in that sense. "Dismissal" and "removal" amount to a premature termination of the service of a Government servant as a measure of penalty. The distinction between the two lies in that whereas in the case of removal, a person remains eligible for re-appointment under Government in the case of dismissal, he will not ordinarily be so eligible. Except for that difference, both dismissal and removal cast a stigma on the Government servant and imply that his service has been terminated owing to some misconduct or mis-behaviour. The term "reduction in rank" does not denote reduction to a lower post or a lower time scale of pay or to a lower stage in a time scale. A change of position in the seniority list of a cadre, however, will not amount to reduction in rank.

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

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

**13.2.** If the Government servant is temporary one and has no right to hold the post, dismissal or removal will amount to punishment if such a Government servant has been visited with certain evil consequences. In such a case the termination of his service will not be under the Temporary Service Rules but after observing the procedure laid down in Classification, Control and Appeal Rules (*see* also Chapter VIII).

## **14. Permanent Government employees:**

Where a person is appointed substantively to a post in Government service he normally acquires a right to hold the post until, under the rules he attains the age of superannuation or is retired after he has attained the age of 55 years under F.R. 56 (1). He cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or of other disqualifications and appropriate proceedings are taken under the relevant service rules read with Article 311. Termination of service of such a Government servant which will amount to a punishment which can be imposed only in accordance with the prescribed rules for it will operate as a forfeiture of his right to hold the post by bringing about a premature end of his employment.

## **15. Temporary Government employees:**

**15.1.** A temporary Government employee is subject to the CCS. (T.S.) Rules, rule 5 (1) of which provides that the services of a temporary Government servant can be terminated at any time by a month's notice in writing given either by the Government servant to the competent authority or by the competent authority to the Government servant. A person in temporary service thus has no substantive right to hold the post and his service can be terminated in accordance with rule 5 (1) of C.C.S. (T.S.) Rules by giving him the prescribed notice. A termination of service brought by the exercise of a contractual right does not amount to a dismissal or removal to attract the application of Article 311. Even if misconduct, negligence, inefficiency or other disqualifications may be the motive or the inducing factor which influenced the Government to take action under the terms of contract of employment or under specific service rules, nevertheless, if a right exists, under the contract or under the rules, to terminate the service, the motive operating on the mind of the Government is wholly irrelevant. In Dhingra's case the Supreme Court held that—

"Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not *per se* dismissal or removal as has been, held by this

Court in *Satish Chandra Anand vs. Union of India*. Likewise, the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Article 311(2) as has also been held by this Court in *Shyam Lal v. State of U.P.* In either for the two abovementioned cases the termination of the service did not carry with it the penal consequences of loss of pay, or allowances under F.R. 52. It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influence the Government to take action under the terms of the contract of employment of the specific service rule, nevertheless, if a right exists, under the contract or the rules to terminate the service the motive operating on the mind of the Government is, as *Changla, C.J.*, has said in *Shrinivas Ganesh vs. Union of India*, wholly, irrelevant. In show it, if the termination is founded on the right flowing from contract or the service rules then, *prima facie*, the termination is not a punishment and carried with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with. As already stated, if the Government servant has got a right to continue in the post, unless the contract of employment or the rule provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency of other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Article 311, for it operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances. It puts an indelible stigma on the officer affecting his future career."

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

**16. Quasi-permanent employees:**

The services of a person who having been appointed temporarily to a post has been in continuous service for more than three years and in respect of whom a certificate of quasi-permanency under rule 6 of the C.C.S. (Temporary Service) Rules has been issued, can be terminated only in the circumstances and in the manner in which the employment of a Government servant in a permanent service can be terminated or when the appointing authority certifies that a reduction has occurred in the number of posts available for Government servants not in permanent service. Such a Government servant acquires a right to the post and, therefore, the termination of his employment, otherwise than in accordance with Rule 6 of the C.C.S. (T.S.) Rules, will deprive him of his right to that post which he has acquired under the rules and will *prima facie* be a punishment and regarded as a dismissal or removal from service so as to attract the application of Article 311.

**17. Discharge of probationer/person on probation:**

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

**17.2.** In *Dhingra's case*, the Supreme Court has enunciated the position in regard to probationers thus:—

- (1) Appointment to a post on probation gives to the person so appointed no right to the post and his service may be terminated without taking recourse to procedure laid down in the relevant rules for dismissing or removing a public servant from service.
- (2) The termination of employment of a person holding a post on probation without any enquiry whatsoever cannot be said to deprive him of any right to post and is, therefore, no punishment.
- (3) If instead of terminating the services of such person without any enquiry, the employer chooses to hold an enquiry into his alleged misconduct, or inefficiency or for some similar reason and if the probationer is discharged on any one of those grounds without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge, it will amount to dismissal or removal from service within the meaning of Article 311 (2) of the Constitution and will, therefore, be liable to be struck down.
- (4) If the employer simply terminates the services of a probationer, without holding an enquiry and without even giving him a chance of showing cause against his removal from service, the probationary civil servant will have no cause of action, even though the real motive behind the removal from service may have been that his employer thought him to be unsuitable for the post he was holding on probation, on account of his misconduct, or inefficiency, or some such cause.

### **18. Officiating appointment:**

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

**18.2.** This aspect was clarified by the Supreme Court in the case of an Inspector of Police who was holding the post of Deputy Superintendent in an officiating capacity but was subsequently reverted. It appeared that there were certain allegations of corruption against the officer and an enquiry was held. The order was a simple one which did not give any reason or refer to any misconduct. The order was challenged on the ground that the reversion was really meant as a penalty. The Supreme Court rejected the contention and held that his reversion was *not* bad in law as motive was not relevant. (State of Maharashtra vs. A braham, Civil Appeal No. 69 of 1961)

### **19. Reduction in rank:**

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

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

### **20. Services covered by Article 311:**

Civil services of the State Government, civil posts under the State Government and All-India Services officers on the State Cadre are covered by Article 311(1) of the Constitution. Employees of public undertakings or of independent corporate bodies are not holders of civil posts and are not covered by Article 311 except Government servants who are on deputation to such undertakings or corporate bodies.

### **21. Authority competent to dismiss or remove [Article 311(1)]:**

**21.1.** Clause (1) of Article 311 provides that person who is, a member of a civil service of the Union or State or an All-India Service or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. The appointing authority cannot delegate his power of dismissal and removal to a subordinate authority.

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

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

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

removal will be the higher authority which confirmed the Government servant and not the authority which actually appointed him.

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

## **22. Reasonable opportunity and natural justice:**

**22.1.** The substantive part of clause (2) of Article 311 provides that "no such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him." What constitutes "reasonable opportunity" has been considered by High Courts and the Supreme Court on a number of occasions. According to the prescribed procedures the disciplinary authority should hold an enquiry, hear and weigh the evidence and consider the merits of the case before coming to a conclusion. These constitute elements of a judicial approach and, therefore, in discharging its functions in disciplinary enquiries, the disciplinary authority acts in a quasi-judicial capacity. As a corollary, the requirements of "reasonable opportunity" have been equated with the principles of natural justice (Joseph John's case, A.I.R. 1955 S.C. 160). Courts have freely applied these principles to departmental enquiries and disciplinary proceedings against Government servants.

**22-2.** It has been held that for a proper compliance with the requirement of "reasonable opportunity" as envisaged in Article 311 (2), a Government servant against whom action is proposed to be taken should in the first instance, be given an opportunity to deny the charge and to establish his innocence and if as a result of an enquiry the finding is of guilt, he should be given an opportunity to represent if he so desires, against the quantum of punishment proposed to be inflicted upon him. The opportunity at both the stages should be given irrespective of whether it is claimed or not by the Government servant concerned.

**22.3.** In *Khem Chand vs. Union of India* (A.I.R. 1958 S.C. 300) the Supreme Court explained the nature and scope of "reasonable opportunity" in the following terms:—

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

To summaries; the reasonable opportunity envisaged by the provision under consideration includes—■

- (a) an opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges leveled against him are and the allegations on which such charges are based;
- (b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

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

**22.4.** The Supreme Court in *Union of India vs. Verma* (A.I.R. 1957 S.C. 882) has summarized the principles of natural justice thus—

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

Hence, the rules of natural justice are violated—

- (a) where the inquiry is confidential and is held *ex-parte*, or the witnesses are examined in the absence of accused officer;
- (b) where the accused officer is denied the right to call material defence witnesses, or to cross-examine the prosecution witnesses, or he is not given sufficient time to answer the charges, or the Inquiring Authority acts upon documents not disclosed to the accused officer;
- (c) where the Inquiry Officer has a personal bias against the person charged.

### **23. Exceptions to Article 311 (2):**

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

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

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

**23.4. Reasons of security.**—Under proviso (c) to Article 311 (2), where the President or the Governor, as the case may be, is satisfied that the retention of a person in public service is prejudicial to the security of the State, his services can be terminated without recourse to the normal procedure prescribed in Article 311 (2). The satisfaction referred to in the proviso is the subjective satisfaction of the President or of the Governor, as the case may be, about the expediency of not giving an opportunity to the employee concerned in the interest of the security of the State. This clause does not require that reasons for the satisfaction should be recorded in writing. That indicates that the power given to the President or to the Governor is unfettered and cannot be made a justifiable issue, as that would amount to substituting the satisfaction of the court in place of the satisfaction of the President or of the Governor.

#### 24. Summary of principles laid down by Courts:

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

- (1) Articles 310 and 311 apply to all Government servants whether permanent, temporary, officiating or on probation (Dhingra's Case).
- (2) Article 311 (1) and (2) is a proviso to Article 310 (1) (Dhingra's Case).
- (3) The words "dismissed", "removed" or "reduced in rank" have a special meaning, namely, the meaning which they bore as three major punishments in service rules, the difference between dismissal and removal being that dismissal ordinarily disqualifies for future employment and removal ordinarily do not (Satish Chandra's Case, 1953, S.C.R. 655; Shyam Lai's Case, 1955 S.C.R. 26; Dhingra's Case, and Khem Chand's Case)
- (4) The right of a person to hold a substantive post till he attains the age of superannuation or is compulsorily retired is subject to a contract, express or implied, or to a service rule providing for its earlier termination (Dhingra's Case) and the same is true of a temporary post (Satish Chandra's Case; Hartwell Prescott Singh's Case, 1958, S.C.R 509; Balakotiah's Case, 1958 S.C.R. 1052; and Dalip Singh's Case, 1961, 1. S.C.R. 68)
- (5) The termination of service brought about otherwise than by way of punishment is not dismissal or removal within the meaning of Article 311 (2) (Satish Chandra's Case and Dhingra's Case). Dismissal or removal involve some imputation or charge against the officer which he can meet or controvert (Shyam Lai's Case).
- (6) If the Government has by contract, express or implied, or under the rules, the right to terminate the employment at any time, then such termination in the matter provided by the contract or the rules is *prima facie* and *per se* not punishment and does not attract the provisions of Article 311 (Dhingra's Case and Shyam Lai's Case).
- (7) In principle, there is no distinction between the termination of service of a person under the terms of a contract governing him and the termination of his service in accordance with the terms of his conditions of service (Hartwell Prescott Singh's Case).
- (8) Even if the Government have the right under a contract or a rule to terminate the contract of service, the Government is not obliged or bound to exercise such right if it is of opinion that the conduct of the servant calls for punishment; it may then dismiss or remove him but this can only be done by complying with the requirement of Article 311 (2) (Dhingra's Case, and Union of India vs. Jeewan Ram 1958 A.S.C. 905).
- (9) In the absence of a contract, expressed or implied, or a service rule, the termination of service before the age of superannuation, or before compulsory retirement, is permissible under the rules, or before the period fixed for temporary service has expired, is *per se* a punishment because it operates as forfeiture of the servant's rights and bring about a premature termination of his employment (Dhingra's Case).
- (10) Whether a servant is "punished" is to be found by applying one of the two following tests: (a) has the person been deprived of right to hold the post ? (b) has he been visited by any penal consequences, as for instance, a stigma on his name for misconduct or incompetency, or has he suffered a forfeiture of salary, pension or other benefits? (Dhingra's Case).

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**CHAPTER-IX**  
**DISCIPLINARY PROCEEDINGS—I (INITIAL ACTION)**

**1. Disciplinary rules:**

**1.1.** Penal provisions and procedures for departmental proceedings in disciplinary cases have been laid down in different sets of rules applicable to different categories of Government servants. In Himachal Pradesh, the rules having the widest applicability are the Central Civil Services (Classification, Control and Appeal) Rules, 1965, as applicable to Himachal Pradesh hereinafter referred to as Classification, Control and Appeal, Rules, which apply to all Government servants except:

- (a) Member of the All-India Services who are governed by All-India Services (Discipline and Appeal) Rules, 1969;
- (b) Persons in casual employment;
- (c) Persons subject to discharge from service on less than one month's notice;
- (d) Persons for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the Governor in regard to matters covered by such special provisions [e.g. (1) non-gazetted officers of Police Department are governed by Punjab Police Rules as applicable to Himachal Pradesh, (2) Secretariat staff of Himachal Pradesh Vidhan Sabha is governed by the Himachal Pradesh Vidhan Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1974].

**1.2.** The employees of public sector undertakings, statutory corporations, etc., are governed by the discipline and appeal rules framed by the respective public undertakings or corporation in exercise of the powers conferred upon it by the statute or by the Articles of Memorandum constituting it.

**1.3.** The various sets of disciplinary rules pertaining to Government servants have been framed in conformity with the provisions of Article 311 of the Constitution. The basic provisions in them are therefore similar in character. As the bulk of Government servants are governed by the CCA. Rules, the procedures discussed in the manual are those prescribed in these rules. While a reference to variations of an important nature in other rules has been made at appropriate places, the *ex-officio* Vigilance Officer of the Department will take care to ensure that the provisions of the respective rules are observed where they vary from those prescribed in the CCA. Rules.

**2. Penalties:**

**2.1.** Under rule 11 of the C. C. A. Rules and rule 6 of A.I.S. (Discipline and Appeal) Rules, 1969, the competent authority may, for good and sufficient reasons, impose on a Government servant any of the following penalties:—

(a) Minor penalties:—

- (1) Censure;
- (2) Withholding of promotion;
- (*Explanation.*—Non-promotion of a Government servant whether in a substantive or officiating capacity, after consideration of his case, to a service, grade or post for promotion to which he is eligible will not amount to a penalty);
- (3) Recovery from his pay of the whole or part of any pecuniary loss caused by the Government servant to the Government by negligence or breach of orders;
- (4) Withholding of increments of pay;

[*Explanation.*—The following will not amount to a penalty:—

- (i) Withholding of increments of pay of a Government servant for his failure to pass any departmental examination in accordance with the rules or orders governing the service to which he belongs or post which he holds or the terms of his appointment;
- (ii) Stoppage of a Government servant at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar].

(b) Major penalties:—

- (1) Reduction to a lower stage in the time-scale of pay, for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;
- (2) Reduction to a lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service;

[*Explanation.*—The following shall not amount to a penalty:—

- (i) Reversion of Government servant officiating in a higher service, grade or post to a lower service, grade or post on the ground that he is considered to be unsuitable for such higher service, grade or post or on any administrative ground unconnected with his conduct;
- (ii) Reversion of a Government servant, appointed on probation to any other service, grade or post, to his permanent service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and order governing such probation;
- (iii) Replacement of the services of a Government servant, whose services had been borrowed from a State Government at the disposal of the State Government or the authority from which the services of such Government servant had been borrowed];

(3) Compulsory retirement:

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

(4) Removal from service which shall not be a disqualification for future employment under the Government:

*[Explanation.* Termination of service in the under mentioned circumstances will not amount to a penalty of removal from service:—

- (i) of a Government servant appointed on probation, during or at the end of the period of his probation, in accordance with the terms of his appointment or the rules and orders governing such probation; or
- (ii) of a temporary Government servant in accordance with the provisions of sub-rule(1) of rule 5 of the Central Civil Services (Temporary Service) Rules, 1965; or
- (iii) of a Government servant, employed under an agreement, in accordance with the terms of such agreement];

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

### **3. Warning:**

**3.1.** An order of 'censure' is a formal act intended to convey that the person concerned has been held guilty of some blame-worthy act or omission for which it has been found necessary to award him a formal punishment. There may be occasions, however, when a superior officer may find it necessary to 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 informal action, such as, the communication of a written warning, admonition, reprimand or caution. Administration of a warning in such circumstances does not amount to a formal punishment. It is an administrative procedure used by 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.

**3.2.** The punishment of censure can be imposed only for "good and sufficient reasons" after following the prescribed procedure and the imposition of the punishment is conveyed by a formal written order. A record of the punishment is kept on the officer's confidential roll and will have its bearing on the assessment of his merit or suitability for promotion to higher rank. A warning may, however, be administered verbally or in writing. If the circumstances justify it, a mention of it may be made in or copy of it placed on the officer's character roll. Though not amounting to the imposition of the penalty of censure, it may, to some extent, affect the assessment of his merit and suitability for promotion.

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

**3.4.** The fact that an informal warning does not carry with it the stigma of a formal penalty should not be taken as tantamount to suggesting that a warning may be freely given. Considerations of simple natural justice demand that a written warning or reprimand should not be administered or placed on an officer's confidential roll unless the authority doing so is satisfied that there is good and sufficient reason for doing so. Unless the lapses in respect of which the officer is proposed to be warned, etc., are absolutely incontrovertible, an opportunity should be afforded to the official concerned to explain his position before the warning is kept on his character roll.

**3.5.** Where after the conclusion of regular disciplinary proceedings, it is decided that no formal penalty is needed and that it would be sufficient if a warning is administered to the official, this warning may be kept on his character roll in consultation with the Vigilance Department.

#### **4. Displeasure of Government:**

On occasions a Government servant may be found to have committed an irregularity or lapse of a character which though not considered serious enough to warrant action being taken for the imposition of a formal penalty or even for the administration of a warning but the irregularity or lapse is such that it may be considered necessary to convey to the officer concerned the sense of displeasure over it. Such displeasure is usually communicated in the form of a letter and a copy of it may, if so decided, be placed on the character roll of the officer. Like warning, communication of displeasure does not amount to the imposition of a penalty under the CCA. Rules.

#### **5. Redaction of Pensions:**

A Government servant ceases to be subject to the disciplinary rules after retirement. A pension once sanctioned cannot be reduced, withheld or withdrawn except in accordance with the provisions of rules 8 and 9 of the Central Civil Services (Pension) Rules, 1972, or of rule 6 of the A.I.S. (Death-CM ffi-Retirement Benefit) Rules, 1955 in the case of officers of All-India Services.

#### **6. Disciplinary authority:**

**6.1.** Rule 2 (g) of the CCA. Rules defines the term 'disciplinary authority' as the authority competent to impose on a Government servant any of the penalties specified in rule 11. The penalties specified in clauses (i) to (iv) (i.e. any of the minor penalties), may, however, also be imposed by an authority lower than the appointing authority on a Government servant or by any other authority empowered in this behalf by a general or special order of the Governor.

**6.2.** Rule 12 of the CCA. Rules also provides that—

- (1) the Governor may impose any of the penalties specified in rule 11 on any Government servant, and
- (2) without prejudice to the above provision, any of the penalties specified in rule 11 may be imposed on a Government servant by the appointing authority or by any authority empowered in this behalf by a general or special order of the Government.

**6.3.** For purposes of determining the competent disciplinary authority, a Government servant belonging to a service or holding a civil post of any class who has been promoted, whether on probation or temporarily to a higher service or a post, shall be deemed to belong to the service of or to be a holder of the civil post of the higher class.

#### **7. Authority competent to institute disciplinary proceedings under CCA. Rules:**

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

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

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

**8.1.** The All-India Services (Discipline and Appeal) Rules, 1969 are to a great extent in conformity with CCA. Rules, 1965. Under rule 7 of the All-India Services (Discipline and Appeal) Rules, 1969, disciplinary proceedings against a member of the All-India Services may be instituted.

- (a) by the Government under which he is for the time being serving, if the act or omission which has rendered him liable to a penalty was committed before his appointment to an All-India Service;
- (b) by the Government under whom he was serving at the time of the commission of such act or omission if the act or omission was committed after his appointment to an AU-India Service.

**8.2.** The Central Government can initiate disciplinary proceedings against a member of an All-India Services if the act or omission was committed while he was serving under the Central Government or while on deputation to any public sector undertaking or local authority under the Central Government. The Central Government can also initiate disciplinary proceedings against a member of an All-India Service who has gone back to the State if the act of omission or commission was committed while he was on deputation under the Centre.

**8.3.** The Himachal Pradesh Government can similarly initiate proceedings against a member of an All-India Service for the imposition of any of the penalties, including any of the major penalties, if the act or omission was committed while he was serving under Himachal Pradesh Government or while on deputation to any corporation or local authority under Himachal Pradesh Government. It can also initiate disciplinary proceedings against a member of an AU-India Service who is on deputation to the Central Government or to any other State Government or to any other authority under the Central/State

Government if the act or omission or commission was committed while he was serving under the Government of Himachal Pradesh. But under rule 6 (2) of A.I.S. (D. & A.) Rules, the penalty of dismissal, removal or compulsory retirement shall not be imposed on a member of the service except by an order of the Central Government.

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

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

**10. Institution of formal proceedings:**

**10.1.** In all cases where preliminary enquiry is conducted by the Anti-Corruption Unit, the enquiry reports should be submitted to the Vigilance Department for further action. In other cases where preliminary enquiry is conducted by a departmental officer and if a *prima facie* case of vigilance nature is established, then the enquiry report should be forwarded to the Vigilance Department for its advice as to the further course of action. After examination of the enquiry report, thus submitted, the Vigilance Department will advise the Administrative Department whether regular departmental action for imposition of major/minor penalty is to be taken against the delinquent or a warning is to be administered or the case is to be closed. In case the disciplinary authority does not agree with the advice of the Vigilance Department, the procedure as laid down in para 7 of Chapter I has to be followed.

**10.2.** In a case in which proceedings are initiated under rule 14 (as for a major penalty), if after examining the report of oral inquiry, the disciplinary authority in consultation with the Vigilance Department considers that it would be sufficient to impose a minor penalty, it can do so without issuing a show cause notice to the official. But in a case in which proceedings are initiated under rule 16 (as for a minor penalty) it would not be possible for the disciplinary authority to impose a major penalty. It would have to start proceedings *de novo* under rule 14, if it wants.

**10.3.** The preliminary inquiry report is a confidential document and should not be produced before the Inquiry Officer or even before a Court of Law. Privilege can be claimed in a Court of Law under sections 123 and 124 of the Indian Evidence Act, 1872. No direct reference should be made about the Enquiry Report in the statements/affidavits filed in the Court of Law, as it would be difficult to claim privilege for the production of documents before a Court of Law if a direct reference is made in the statements/affidavits. Reference in the statements/affidavits may be restricted to the material which is contained in the statements of charges and allegations served on the delinquent public servant. Similarly a mention of the enquiry report should not be made in the articles of charge and the statement of imputations of misconduct or misbehaviour.

The relevant sections of the Indian Evidence Act, 1872 are given below:—

"Section 123. *Evidence as to affairs of State.*—No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State except with the permission of the officer at the head of the department concerned who shall give or withhold such permission as he thinks fit.

**Section 124. *official communications.***—No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure."

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

- (i) Cases in which there is a reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a Court of Law, *e.g.*—
  - (a) possession of disproportionate assets;
  - (b) obtaining or attempting to obtain illegal gratification;
  - (c) misappropriation of Government property, money or stores;
  - (d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate;
- (ii) Falsification of Government records;
- (iii) Gross irregularity or negligence in the discharge of official duties with a dishonest motive;
- (iv) Misuse of official position or power for personal gain;
- (v) Disclosure of secret or confidential information even though it does not fall strictly within the scope of the Official Secrets Act;

(vi) False claims on the Government like T. A. claims, re-imbusement claims etc.

### **11. Procedure for imposing minor penalties:**

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

**11.2.** If the competent disciplinary authority in respect of the Government servant against whom action is proposed to be taken is the Governor, the file should be shown to the Minister before the charge sheet is issued and the memorandum should be signed in the name of the Governor by an officer competent to authenticate orders on behalf of the Governor under Article 166 of the Constitution.

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

**11.4.** After taking into consideration the representation of the Government servant or without it if no such representation is received from him by the date specified, the disciplinary authority will proceed, after taking into account such evidence as it may think fit, to record its findings on each imputation<sup>s</sup> of misconduct or mis-behaviour.

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

**11.6.** In a case the disciplinary authority is of the opinion that the allegations against the Government servant stand substantiated, it may impose upon him any of the minor penalties specified in rule 11 of the C.C. A- Rules subject to the provisions of paragraph 11.9. In the order imposing a formal penalty reference to the advice given by the Vigilance Department of the State Government to the disciplinary authority should not be made.

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

**11.8.** Under rule 16(6) of the CCA. Rules the disciplinary authority may, if it thinks fit, in the circumstances of any particular case, decide that an enquiry should be held in the manner laid down in sub-rules (3) to (23) of rule 14 of the CCA. Rules, all the formalities beginning with framing of articles of charge, statement of imputation etc. will have to be gone through. A disciplinary authority may consider holding such enquiry in a case, for example, in which the Government servant desires to be heard in person or has requested for access to records or where the disciplinary authority considers it necessary to have the evidence of a number of witnesses for substantiating the allegations. In cases in which it is decided to hold an enquiry the procedure to be followed will be the same as prescribed for an enquiry into a case in which a major penalty is proposed to be imposed.

**11.9.** If in a case it is proposed, after considering the representation, if any, submitted by a Government servant, to withhold increments of pay with cumulative effect for any period or to withhold increment of pay for period exceeding three years or if the penalty of withholding of increments is likely to affect adversely the amount of pension payable to the Government servant, an enquiry shall be held in the manner laid down in sub-rules (3) to (23) of rule 14.

**11.10.** The record of proceedings in such cases shall include:—

- (i) a copy of the intimation to the Government servant of the proposal to take action against him;
- (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;

- (iii) his representation, if any;
- (iv) the evidence produced during the inquiry if an enquiry is held in the manner laid down in sub-rules (3) to (23) of rule 14 of CCA. Rules;
- (v) the advice of the State Public Service Commission, if any;
- (vi) the findings on each imputation of misconduct or misbehaviour; and
- (vii) the orders on the case together with the reasons therefore.

## 12. Procedure for imposing major penalties:

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

**12.2.** Ordinarily an inquiry will be made in accordance with the provisions of rule 14 of the CCA. Rules. However, in respect of a Government servant who is not removable from his office without the sanction of Government, the disciplinary authority, which will be the Governor in the case of such a Government servant, may decide to make use of the procedure laid down in the 1850 Act if it is considered that there are good grounds for making a formal and public enquiry in to the truth of any imputation of mis-behaviour on his part.

**12.3.** The choice of the procedure is a matter within the discretion of the disciplinary authority. It is not obligatory to protect under the 1850 Act when Government proposes to take action against a Government servant covered by the Act (Venkataraman w. Union of India, A.I.R 1954, S.C. 375).

**12.4.** There is no material difference in the scope of the two procedures which is to make a fact-finding enquiry to enable Government to determine provisionally the punishment which should be imposed upon the delinquent officer. Like the proceedings under the CCA. Rules the Commissioner (s) appointed under the 1850 Act to make the enquiry do not constitute a judicial tribunal though they possess some of the trappings of a Court. The findings of the Commissioner(s) upon the charge are a mere expression of opinion and do not partake of the nature of a judicial pronouncement and the Government is free to take any action it likes upon the report.

**12.5.** The holding of an inquiry against a Government servant under the 1850 Act does not involve any discrimination and will not give him cause to question the conduct of an enquiry against him on that ground within the meaning of Article 14 of the Constitution. A person against whom an enquiry has been held under that Act could not claim a further or a fresh enquiry under the CCA. Rules (Venkataraman vs. Union of India).

**12.6** The procedure under the 1850 Act is, however, distinguishable from the provisions of the ordinary disciplinary rules in that while an enquiry made under the Act is a public enquiry, a departmental enquiry made under the relevant disciplinary rules is not so. These factors will need to be taken into account in deciding whether in any particular case the procedure of 1850 Act should be adopted or not. An enquiry under the provision of the Act is generally made in a case in which a high official is involved and it is considered desirable in the circumstances of the case to have a public enquiry. Generally a judicial officer like a judge of a High Court is appointed as a Commissioner to conduct an enquiry under the Act. That procedure will, however, not be found suitable in a case which might involve the disclosure of information or production of documents prejudicial to national interest or to the security of the State.

## 13. Articles of Charge:

**13.1.** As soon as a decision has been taken by the competent authority to start disciplinary proceedings for a major penalty, the *ex-officio* Vigilance Officer of the department in consultation with the Vigilance Department will draw up on the basis of the material gathered during the preliminary enquiry—

- (i) the substance of the imputations of misconduct or mis-behaviour into definite and distinct articles of charge;
- (ii) a statement of the imputations of misconduct or mis-behaviour 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.

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

**13.3.** The articles of charge should be framed with great care. The following guidelines will be of help:—

- (a) each charge should be expressed in clear and precise terms, it should not be vague;
- (b) a separate charge should be framed in respect of each separate allegation;
- (c) multiplication or splitting up charges on the basis of the same allegation should be avoided;
- (d) the wording of charge should not appear to be an expression of opinion as to the guilt of the accused;
- (e) a charge should not relate to a matter which has already been the subject-matter of an oral enquiry and decision.

**14. 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 Government servant in support of each charge including any admission or confession made by the Government servant and any other circumstances which it is proposed to take into consideration. A statement that a Government servant allowed certain entries to be made with ulterior motive was held to be much too vague. A vague accusation that the Government servant was in the habit of doing certain acts in the past is also not sufficient.

**15. List of witnesses:**

A number of witnesses are usually examined during the course of the preliminary enquiry 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 enquiry.

**16. List of documents:**

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

**17. Draft articles of charge prepared by the Anti-Corruption Unit:**

In all cases investigated by the Anti-Corruption Unit, the Vigilance Department will forward to the disciplinary authority a draft of articles of charge, statement of imputations, and lists of documents and witnesses along with the enquiry report. The *ex officio* Vigilance Officer should carefully scrutinize them. If there is any discrepancy or a doubt arises about the correctness of any item, the matter should be promptly discussed and cleared with the Vigilance Department.

**18. Standard form of articles of charge:**

Standard skeleton forms of the articles of charge and the statement of imputations and of the covering memorandum are given in the appendix. The covering memorandum should be signed by the disciplinary authority or in cases in which the Governor is the disciplinary authority by an officer who is authorised to authenticate orders on his behalf.

**19. Delivery of articles of charge:**

**19.1.** The disciplinary authority will deliver or cause to be delivered a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each charge is proposed to be sustained to the Government servant in person if he is on duty and his acknowledgement taken or by registered post, acknowledgement due. The acknowledgement of the Government servant should be added to the case.

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

**20. Statement of defense:**

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

**20.2.** Unlike the CCA. Rules of 1957, the CCS. (CCA.) Rules, 1965, do not provide for inspection of documents by the accused official for the submission of written statement of defence. Rule 14(4) is not intended for submission of any elaborate statement of defence but only to give an opportunity to the Government servant to admit or deny his guilt. For admitting or denying the charges, no inspection of documents is necessary and that is why such inspection has not been

provided for in rule 14 (4). If a Government servant admits the charges, there will be no need to hold an inquiry. If he does not, an enquiry will be held at which he will be provided with the fullest opportunity to inspect and take extracts of various documents.

### **21. Action on charges which are admitted:**

On receipt of the written statement of defence the disciplinary authority should examine it carefully. If all the charges have been admitted by the Government servant, the disciplinary authority will take such evidence as it may think fit and record its findings on each charge. Further action on the findings will be taken in the manner described in Chapter XII.

### **22. Appointment of Inquiring Authority for charges which are not admitted:**

**22.1.** If the disciplinary authority finds that any or all of the charges have not been admitted by the Government servant in his written statement of defence or if no written statement of defence is received by him by the date specified, the disciplinary authority may itself inquire into such charges or appoint an Inquiring Authority to inquire into the truth of the charges. Though the CCA. Rules permit such an enquiry being made by the disciplinary authority itself, the normal practice is to appoint another officer as inquiring authority.

**22.2.** Normally in all vigilance cases of gazetted officers, Commissioner for Departmental Enquiries, Himachal Pradesh should be appointed the Inquiring Authority by the Disciplinary Authority. And in all vigilance cases of non-gazetted officers, Director of Departmental Enquiries, should be appointed the Inquiring Authority. Whenever gazetted as well as non-gazetted officers are involved in" a vigilance case then the Disciplinary Authority should appoint the Commission for Departmental Enquiries, as the Inquiring Authority.

**22.3.** If in any particular case covered by the sub-para 22.2 above, the disciplinary Commissioner authority feels that for any special reasons the enquiry should not be entrusted to the Commissioner for Departmental Enquiries/Director of Departmental Enquiries, the disciplinary authority may approach the Vigilance Department indicating the circumstances which would warrant an exception being made together with the name and designation of the officer proposed to be appointed as Inquiring Authority.

**22.4.** Disciplinary enquiries against gazetted/non-gazetted officers without any vigilance angle should normally be entrusted to departmental officers for oral inquiries. However, in cases where the disciplinary authority feels that the issues are complicated or *I* ave peculiar features, the disciplinary authority may approach the Vigilance Department setting out the facts in detail and request for the nomination of the Commissioner for Departmental Enquiries or Director, Departmental Enquiries as the case may be.

**22.5.** As soon as the disciplinary authority has decided upon the person who will conduct the oral enquiry, it will issue an order appointing him as the Inquiring Authority in the form given in the appendix.

### **23. Appointment of a Presenting Officer:**

**23.1.** The disciplinary authority which initiated the proceedings will also appoint simultaneously a Government servant or a legal practitioner as the Presenting Officer to present on its behalf the case in support of the articles of charge before the Inquiring Authority in the form given in the appendix. There is one Public Prosecutor and one Assistant Public Prosecutor in the Vigilance Department to present the cases on behalf of the Disciplinary Authority in all vigilance cases before the Commissioner for Departmental Enquiries and the Director of Departmental Enquiries. The Public Prosecutor conducts cases before the Commissioner for Departmental Enquiries and the Assistant Public Prosecutor conducts cases before the Director of Departmental Enquiries. Thus the Disciplinary Authority should appoint Public Prosecutor as Presenting Officer in the case of a gazetted officer and the Assistant Public Prosecutor as the Presenting Officer in the case of a non-gazetted officer. As soon as one of these two officers is appointed Presenting Officer the record of the preliminary enquiry against the delinquent Government servant should be made available to the Presenting Officer.

**23.2.** While the disciplinary rules under which departmental enquiries are conducted against Government employees provide for the appointment of a Presenting Officer by the disciplinary authority, to present its case before the Inquiring Authority, the disciplinary rules of certain public undertakings do not contain such a provision. As the appointment of a Presenting Officer would help in the satisfactory conduct of departmental enquiry, the Vigilance Department would advise that even in cases where the disciplinary rules did not contain a specific provision for the appointment of a Presenting Officer, the disciplinary authorities may consider appointing a Presenting Officer Tor presenting the case before the Inquiring Authority.

#### **24. Assistance to the accused Government servant in the presentation of his case:**

**24.1.** If the Presenting Officer appointed by the disciplinary authority is a legal practitioner, the Government servant will be so informed by the disciplinary authority as soon as the Presenting Officer has been appointed so that the Government servant may, if he so desires, engage a legal practitioner to present the case on his behalf before the Inquiry Officer. The Government servant may not otherwise engage a legal practitioner unless the disciplinary authority having regard to the circumstances of a case, so permits. If, for example, the facts and the mass of evidence are very complicated and a layman will be at sea to understand the implications thereof and prepare a proper defence, the facility of a lawyer should be allowed as part of the reasonable opportunity. In other cases, the Government servant may avail himself of the assistance of any other Government servant as defined in rule 2 (h) of CCA. Rules.

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

#### **25. Documents to be forwarded to the Inquiring Authority:**

[See rule 14 (6) of CCA. Rules and rule 8 (7) of A.I.S. (E. and A.) Rules, 1969].

**25.1.** As soon as the order of appointment of the Inquiry Officer is issued, the disciplinary authority will forward to him the following papers:—

- (i) a copy of the articles of charge and the statement of imputations of misconduct or misbehaviour;
- (ii) a copy of the written statement of defence submitted by the Government servant. If the accused Government servant has not submitted a written statement of defence, this fact should be clearly brought to the notice of the Inquiring Authority;
- (iii) a copy of the statements of witnesses by whom the articles of charge are proposed to be sustained. In the case of common proceedings the number of copies of the statements of witnesses should be as many as the number of accused Government servants covered by the enquiry;
- (iv) evidence proving the delivery of the documents to the delinquent Government servant. The date of receipt of the document by the accused should be clearly indicated. The date of receipt of the articles of charge by the delinquent Government servant will need to be taken into account by the Inquiring Authority in fixing the date of the first hearing;
- (v) a copy of the order appointing the Presenting Officer.

**25.2.** The above documents and all other relevant papers should be made available to the Presenting Officer at the earliest possible. If the Government servant has submitted a written statement of defence, the Presenting Officer will carefully examine it. If there are any facts which the Government servant has admitted in his statement, without admitting the charges, a list of such facts should be prepared by the Presenting Officer and brought to the notice of the Inquiry Officer at an appropriate stage of the proceedings so that it may not be necessary to lead any evidence to prove that the facts which the Government servant has admitted.

#### **26. Enquiries entrusted to the Commissioner for Departmental Enquiries/Director of Departmental Enquiries against an officer under suspension:**

**26.1.** In enquiries in which the Commissioner for Departmental Enquiries/Director of Departmental Enquiries is appointed as the Enquiring Authority against an officer who is under suspension, that fact should be specifically brought to the notice of the Commissioner for Departmental Enquiries/Director of Departmental Enquiries indicating the date from which the officer has been under suspension so that the Commissioner for Departmental Enquiries/Director of Departmental Enquiries may be able to give priority to such a case.

**26.2.** Similar intimation should be sent to the Inquiry Officer other than] Commissioner for Departmental Enquiries/Director of Departmental Enquiries as well as this would enable them to accord priority to such cases.

#### **27. Common proceedings:**

**27.1.** Under rule 18 of Classification, Control and Appeal Rules where two or more Government servants are concerned in any case, the Governor or any other authority competent to impose the penalty of dismissal from service on all the accused Government servants may make an order directing that disciplinary action against all of them be taken in a common proceedings. If the authorities competent to impose the penalty of dismissal from service on such Government servants are different, an order for common proceedings may be made by the highest of such authorities with the consent of the others. Such an order should specify—

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

A standard form of the order is given in the appendix.

**27.2.** Under rule 13 of the A.I.S. (D. & A.) Rules, 1969, when two or more members of the All-India Services are concerned in any case, the Government may make an order directing that disciplinary action against all of them may be taken in a common proceedings.

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

**27.4.** If the alleged misconduct has been committed jointly by a person who has retired from Government service and a person who is still in service, common proceedings against them cannot be started. Proceedings against the retired person will be held under rule 9 of the C.C.S. (Pension) Rules, 1972 and against the person in service under rule 14 of the CCA. Rules.

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

**27.6.** In cases mentioned in paras 27.4 and 27.5 above, the oral enquiry may be entrusted to the same inquiry Officer so that the delinquents may not adopt shifting postures and the records are not held up with one Inquiring Authority and the witnesses do not give varying statements before different Inquiring Authority. The Inquiring Authority can also record the evidence of witnesses against the delinquents in common provided written consent is given to this effect by them. If they do not give their written consent, same witnesses appearing against them will have to be examined separately.

#### **28. Special procedure in certain cases:**

**28.1.** Rule 19 of CCA. Rules provides that notwithstanding anything contained in rules 14 to 18—

- (i) where any penalty is proposed to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or
- (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in the CCA. Rules, or
- (iii) where the Governor is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in the CCA. Rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit. The State Public Service Commission will be consulted where such consultation is necessary before any orders are made in any case under this rule.

**28.2.** Similarly rule 14 of the A.I.S. (D. & A.) Rules, 1969 provides that notwithstanding anything contained in rules 8 to 12 of the said rules—

- (i) where any penalty is imposed on a member of the service on the ground of conduct which has led to his conviction on a criminal charge : or
- (ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules: or
- (iii) where the President is satisfied that, in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Union Public Service Commission be consulted where any orders are made in any case under this rule,

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

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

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

The question whether action under rule 19 (i) of the CCA. Rules can be taken against a Government servant, who though convicted by a Court of Law but is not to suffer any disqualification because he has been dealt with under section 3 or 4 of the Probation of Offenders Act, has been considered by the Central Government on the basis of the Andhra Pradesh High Court's Judgment in A. Satyanarayana Murthy vs. Zonal Manager, L.I.C. (A.I.R. 69 371) and it has been decided that the order under rule 19(0) of CCA. Rules may be passed on the ground of conduct which led to the conviction of the Government servant and not because of the conviction which is wiped out in view of section 12 of the Probation of the Offenders Act.

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**CHAPTER-X**  
**DISCIPLINARY PROCEEDINGS—II-(ORAL ENQUIRY)**

**I. Fixation of date and place of hearings:**

**1.1.** On receipt of the order of appointment and the documents enumerated in paragraph 25 of Chapter IX the Inquiry Officer will send a notice asking the Government servant to present himself before the Inquiry Officer at the appointed place, date and time. In the notice the Government servant will also be asked to intimate to the Inquiry Officer before the date fixed for the first hearing, the name of the Government servant or of the legal practitioner, as the case may be, who will be assisting him in the presentation of his case during the enquiry together with a copy of the permission, where necessary, of the disciplinary authority allowing him the assistance of legal practitioner.

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

**1.3.** Normally the hearings will be held at the place where the Government servant was employed at the time of the commission or omission of the act or acts forming the ground for the disciplinary proceedings and/or where the documentary evidence and witnesses are likely to be available. The Inquiry Officer may, however, fix any other place for the inquiry or different places for different hearings during the course of the inquiry considering the maximum convenience of the parties concerned with reference to the purpose of each hearing.

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

**1.5.** As soon as the accused Government servant informs the Inquiry Officer of the name and other particulars of the Government servant who has been chosen by him to assist in the presentation of his case, the Inquiry Officer will intimate this fact to the controlling authority of the Government servant concerned. Further, the date and time of the hearing should be intimated to the said controlling authority sufficiently in advance adding that if, for any compelling reason it is not practicable to relieve, the Government servant concerned on the due date or dates to attend the enquiry, the Inquiry Officer, the accused official and the Government servant chosen for assisting the accused official may be advised well in advance.

**2. First hearing:**

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

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

**2.3.** If the Government servant fails to appear on the date and time fixed for the hearing or appears but refuses or omits to plead or pleads not guilty, the Inquiry Officer will ask the presenting officer to produce the evidence by which he proposes to prove the articles of charge and will adjourn the case to a date not later than 30 days.

**2.4.** The disciplinary authorities and the Vigilance Department should be kept posted with the progress of oral inquiries. The best way for this would be for the Presenting Officer to send brief reports of the work done at the end of each hearing to the disciplinary authority and the Vigilance Department in the prescribed proforma.

**3. Inspection of documents by the Government servant:**

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

- (i) inspect, within 5 days of the order or within such further time not exceeding 5 days as the Inquiry Officer may allow, the documents mentioned in the list of documents sent to him with the articles of charge, and
- (ii) submit a list of witnesses to be examined on his behalf together with their full addresses.

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

articles of charge. In asking for such documents the Government servant will also indicate the relevance of the document to the presentation of his case.

**3.3.** On receipt of such request, the Inquiry Officer may, for reasons to be recorded by him in writing, refuse to requisition such of the documents as are, in his opinion, *not* relevant to the case. The following may be cited as examples of documents access to which may reasonably be denied:—

- (i) *Reports of a departmental officer appointed to hold a preliminary enquiry or the report of the preliminary investigation of Anti-Corruption Unit.*—These reports are intended only for the disciplinary authority to satisfy itself whether departmental action should be taken against the Government servant or not and are treated as confidential documents. These reports are not to be presented before the Inquiry Officer and no reference to them is to be made in the statement of allegations.
- (ii) *File dealing with the disciplinary case against the Government servant.*—The preliminary inquiry report and the further stages in the disciplinary action against the Government servant are processed on this file. Such files are treated as confidential and access to them should be denied.
- (iii) *Advice of the Vigilance Department.*—The advice tendered by the Vigilance Department is of a confidential nature meant to assist the disciplinary authority and should not be shown to the Government servant.
- (iv) *Character roll of the officer.*—The C.R. of the official should not be shown to him. A copy of the F.I.R. may be made available to the accused, if asked for. If report of preliminary enquiry is referred to in the article of charge or statement of allegations, it has to be made available to the accused Government servant.

**3.4.** The Inquiry Officer will forward the request of the Government servant in respect of the documents about the relevance of which he is satisfied to the authority or authorities in whose custody or possession the documents are kept with a requisition for the production of such document or documents by a specified date.

**3.5.** On receipt of the requisition of the Inquiry Officer the authority having the custody of the requisitioned documents will produce them before the Inquiry Officer on the specified date. However, if the authority concerned is satisfied, for reasons to be recorded by it in writing, that the production of all or any of the documents will be against the public interest or prejudicial to the security of the State, it will inform the Inquiry Officer accordingly and the Inquiry Officer will, on being so informed, communicate the information to the Government servant and withdraw the requisition made by it for the production or discovery of such documents.

**3.6.** Denial of access to documents which have a relevance to the case will amount to violation of the reasonable opportunity mentioned in Article 31(2) of the Constitution. Access may not therefore be denied except on grounds of relevancy or in the public interest or in the interest of the security of the State. The question of relevancy has to be looked at from the point of view of the Government servant and if there is any possible line of defence to which the documents may be in some way relevant, though the relevance is not clear at the time when the Government servant makes the request, the request should not be rejected. The power to deny access on the grounds of public interest or security of State should be exercised only when there are reasonable and sufficient grounds to believe that public interest or security of the State will clearly suffer. Such occasions should be rare.

**3.7.** On the date or dates fixed for the purpose, the accused Government servant and/or the official assisting the accused Government servant will be given facilities to examine the documents referred to in sub-paragraphs 3.1. (?) and 3.5. at such place as the Inquiry Officer may direct in the presence of the Presenting Officer or any other gazetted officer deputed for the purpose by the disciplinary authority or the other authority having the custody of the records. If the Government servant desires to keep notes or extracts, he should be allowed to do so without hindrance. The Presenting Officer or the officer in whose presence the documents are inspected by the Government servant will ensure that the documents are not tampered with by the Government servant during the course of inspection.

#### **4. Supply of copies of documents to the Government servant:**

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

**4.2.** In respect of documents which are required for the enquiry but are held up in a Court of Law, the matter should be brought to the notice of the Vigilance Department. The Vigilance Department will request the Court to part with the documents temporarily so that the delinquent can inspect these documents. If the Courts are not prepared to part with the

documents and if the delinquent public servant insists on seeing the originals, the Presenting Officer will be deputed by the Vigilance Department to make arrangements for the delinquent to inspect the documents in the Courts. If an attested copy is sufficient for the purposes of the inquiry, then the Presenting Officer will procure same from the Courts.

#### **5. Statement of witnesses:**

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

**5.2.** Copies of the statements of witnesses must be demanded by the Government servant well in advance of the commencement of the examination of witnesses. If that is not done, the inference would be that the copies were not needed. There is no duty cast on the disciplinary authority to supply copies without demand.

**5.3.** In some cases, the Government servant may require copies of the statements of some witnesses on which no reliance is proposed to be placed by the disciplinary authority on the ground that he proposes to examine such witnesses on his side and that he requires the previous statement to corroborate the testimony of such witnesses before the enquiring authority. Previous statement made by a person examined as a witness is not admissible for the purposes of corroboration and access to such statements can safely be denied however, the law recognizes that if the former statement was made at or about the time when the fact took place and the person is called to give evidence about such fact in any proceedings, the previous statement can be used for the purposes of corroboration. In such cases, it will be necessary to give access to previous statements.

#### **6. Summoning of witnesses:**

Under section 3 of the Himachal Pradesh Enquiries (Powers) Act, 1973, the enquiring authority is competent to exercise the same powers for summoning of witnesses and compelling the production of documents as are exercisable by a Commissioner appointed for an enquiry under the Public Servant (Enquiries) Act, 1850, and all persons disobeying any process issued by this authority in this behalf shall be liable to the same penalty as if the same had issued from a Court. But such processes are required to be served on the witnesses through the District Judge or City Judge in whose jurisdiction the witness resides. In order to avoid delay in the service of summons it has been decided that in normal course the summons should continue to be served to the Government servants through their Heads of Departments. However, if any Government servant who has been summoned as a witness refuses to receive the summons or evades the service of summons or disobeys the summons then the process should be served through the District Judge in whose jurisdiction the witness concerned resides. As regards the private persons who are summoned as witnesses in the enquiries, the summons should be served through the District Judge itself in whose jurisdiction the person resides.

#### **7. Production of documentary evidence on behalf of the disciplinary authority:**

**7.1.** On the date fixed for the inquiry the Presenting Officer will be asked to lead the Presentation of the case on behalf of the disciplinary authority. The Presenting Officer will draw the attention of the Inquiry Officer to facts admitted by the delinquent Government servant in his written statement of defense, if any, so that it may not be necessary to lead any evidence to prove such facts.

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

#### **8. Examination of witnesses on behalf of the disciplinary authority:**

**8.1.** The witnesses mentioned in the list of witnesses furnished to the Government servant with the articles of charge will then be examined, one by one or on behalf of the Presenting Officer. The witnesses may be numbered as P.W.1, P. W. 2 and so on. During the examination the Inquiry Officer may not allow putting of leading questions in a manner which will allow the very Words to be put into the mouth of a witness which he can just echo back.

**8.2.** Rule 14 (14) of C.C.A. Rules provides that the witnesses may be examined by or on behalf of the Presenting Officer. Absence of P.O. on any particular hearing would not necessarily imply postponement of hearing if an authorized person is present on behalf of the Presenting Officer. The substituted officer need not be formally appointed as Presenting Officer.

**8.3.** In complicated cases involving technical aspects, the Presenting Officers should consult the departmental experts and preliminaries themselves with technical aspects of the matter before the enquiry commences, as also before the cross-

examination of the defense witnesses. The departments should extend necessary help and facilities to the Presenting Officers in consulting the departmental experts and obtaining their assistance on technical aspects of the case. The technical experts, however, should not assist the Presenting Officer during actual cross-examination. In all such cases, it would be helpful to the Inquiry Officer as well as to the parties if the first prosecution witness to be called is an expert of the department concerned who may explain the back-ground and various technicalities of the matter.

### **9. Cross-examination:**

**9.1.** In departmental proceedings the rules of evidence laid down in the Evidence Act are strictly speaking, not applicable and the Inquiry Officer, the Presenting Officer and the accused Government servant are not expected to act like judges or lawyers. The right of the Government servant to cross-examine a witness who has given evidence against him in a departmental proceedings is, however, a safeguard implicit in the reasonable opportunity to be given to him under Article 311 (3).

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

**9.3.** Cross-examination of a witness is the most efficacious method of discovering the truth and exposing falsehood. During the examination-in-chief the witness may say things favourable to the party on whose behalf he tenders evidence and may deliberately conceal facts which may constitute, part of the opponents case. The art of cross-examination lies in interrogating witness in a manner which would bring out the concealed truth.

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

### **10. Re-examination of witnesses:**

After cross-examination of witness by or on behalf of the Government servant the Presenting Officer will be entitled to re-examine the witness on any points on which he has been cross-examined but not on any new matter without the leave of the Inquiry Officer.

### **11. Examination of a witness by the Inquiry Officer:**

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

### **12. Record of evidence:**

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

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

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

**12.4.** As evidence of each witness is completed the Inquiry Officer will read the depositions, as typed, to the witness in the presence of the Government servant and/or the legal practitioner of the Government servant assisting the accused in his defence. Verbal mistakes in the typed depositions, if any, will be corrected in their presence. However, if the witness denies

the correctness of any part of the record, the Inquiry Officer may, instead of correcting the evidence, record the objection of the witness. The Inquiry Officer will record and sign the following certificate at the end of the depositions of each witness:—

"Read over to the witness in the presence of the accused and admitted correct/objection of witness recorded."

**12.5.** The witness will be asked to sign every page of the depositions. The Inquiring Authority will also sign every page of the depositions. The accused Government servant or the official assisting him may also be asked to sign the depositions recorded in their presence. If a witness refuses to sign the depositions, the Inquiry Officer will record this fact and append his signature. Copies of the documents exhibited and of the depositions of witnesses will be kept in separate folders.

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

**12.7.** Copies of the depositions will be made available at the close of the inquiry each day to the Presenting Officer as well as to the accused Government servant.

### **13. Appearance of officers of Audit/Accounts Departments before the Inquiry Officer:**

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

### **14. Admission of additional evidence on behalf of disciplinary authority:**

**14.1.** Before the close of the case on behalf of the disciplinary authority, the Inquiry Officer may, in his discretion, allow the Presenting Officer to produce new oral or documentary evidence not included in the lists of documents and witnesses given to the Government servant with the articles of charge. In such a case the Government servant will be entitled to have, if he demands it, a copy of the list of further documents proposed to be produced and an adjournment of the enquiry for three clear days before the production of such new evidence exclusive of the day of adjournment and the day to which the enquiry is adjourned. The Inquiry Officer will also give the Government servant an opportunity of inspecting such documents before they are taken on the record.

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

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

### **15. Statement of defence**

**15.1.** After the closure of the case for the disciplinary authority, the Inquiry Officer will ask the Government servant to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it will be recorded and the Government servant will be required to sign the record. If he submits his defence in writing, every page of it should be signed by him. In either case a copy of the statement of defence will be given to the Presenting Officer. In the absence of the

delinquent Government servant, his Assisting Officer can state the defence case, if he holds an authorisation to this effect from the delinquent.

**15.2.** Rule 14 (16) of the CCA. Rules, 1965, provides that "when the case for the disciplinary authority is closed, the Government servant shall be required to state his defence .....". In regard to the use of the word 'shall' in sub-rule (16), a question arises whether the Inquiring Officer can waive the provision of this sub-rule and proceed with the case even though the accused officer has not submitted his defence. A reasonable interpretation of this sub-rule is that the delinquent Government servant shall be formally called upon to state his defence, but it is up to him to make or not to make a statement and Inquiring Officer obviously cannot compel him to state his defence, if he does not wish to do so.

#### **16. Production of evidence on behalf of the Government servant:**

**16.1.** The witnesses mentioned in the list of witnesses furnished by the delinquent Government servant immediately after the first hearing will then be produced on his behalf one by one. The documents produced by the defence witnesses will be numbered Ex. D. 1, Ex. D.2 and so on and the witnesses who give oral evidence will be numbered as D.W. 1, and D.W. 2 and so on.

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

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

**16.4.** The defence witnesses will be examined, cross-examined and re-examined in the same manner as the witnesses produced on behalf of the disciplinary authority and a record of their depositions will be made and signed and made available to the parties concerned in the same way as described in paragraphs 8 to 12 above.

**16.5.** If in any particular hearing, the delinquent Government servant is unable to come for any reason, his assisting Government servant can proceed with the case if he has authorization to that effect from the delinquent. Similarly the assisting Government servant can submit the defense of the delinquent as contemplated in rule 14 (16) of CCA. Rules, 1965, if he holds authorization to that effect from the delinquent.

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

#### **17. Production of fresh witness on behalf of the Government servant:**

Before the close of the case on his behalf, the Government servant may request for permission to produce a witness who was not included in the list of witnesses furnished by him *vide* para 3.1 (ii) above for tendering further oral evidence or producing any further documents and the Inquiry Officer may permit the production of such new witness if, in the opinion of the Inquiry Officer, it is necessary in the interest of justice. As stated in para 14 in relation to the production of fresh evidence on behalf of the disciplinary authority, such new witness on behalf of the Government servant will be permitted only if there is an inherent lacuna or defect in the evidence which had been produced originally and not to fill any gap in the evidence.

### **18. Examination of the Government servant by the Inquiry Officer after his case is closed:**

It has already been indicated in para 16.3 that the Government servant can, if he so chooses, offer himself as a witness. If he is examined as a witness, it is for the Inquiry Officer to decide whether he should question him generally for the purpose of enabling him to explain any circumstances appearing in the evidence against him. But if the Government servant does not offer himself as a witness, the Inquiry Officer must question him generally for the purpose stated above. It may be noted that the Presenting Officer would not be entitled to examine the officer at this stage.

### **19. Final hearing:**

After the completion of the production of evidence on both sides, the Inquiry Officer may hear the Presenting Officer and the Government servant or permit them to file written briefs of their respective case, if they so desire. . -

### **20. Requests and representations etc. during the enquiry:**

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

### **21. Daily order sheet:**

The Inquiring Authority should maintain a daily order sheet for each case in which should be recorded in brief the business transacted on each day of hearing.

### **22. General principles:**

**22.1.** The provisions of the Indian Evidence Act and the Criminal Procedure Code are not applicable to departmental inquiries. These provisions are, however, based on principles of natural justice and should be followed in the conduct of the departmental proceedings though not as meticulously as in the Courts of Law. The Inquiry Officer will afford reasonable opportunity to both sides to present their respective case to their satisfaction.

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

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

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

**22.4. *Disproportionate assets cases.***—In disciplinary proceedings against a Government servant on a charge of possession of disproportionate assets, if the Government servant is unable to explain satisfactorily the disproportionate assets possessed by him, the Inquiry Officer can hold that such assets were amassed by the Government servant in a corrupt way.

**22.5. *Affidavits in departmental enquiries.***—Evidence in the form of affidavits cannot be ruled out in departmental proceedings. At the same time it cannot be taken as conclusive. The person swearing to the affidavit may be called for cross-examination and the value to be attached to an affidavit should be decided in each case on merits on the basis of the totality of evidence including the results of the cross-examination etc.

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

### **23. Ex-parte proceedings::**

**23.1.** If the Government servant to whom a Copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the Inquiry Officer or otherwise fails or refuses to comply with the provisions of the C.C.A. Rules, the Inquiry Officer may hold the inquiry *ex-parte*. If the Government servant does not take advantage of the opportunity given to him to explain any facts or circumstances which appear against him he has only to blame himself and the Inquiry Officer has no choice but to proceed *ex-parte*. The enquiry may be held *ex-parte* also in cases in which it is not possible to trace a Government servant and to effect the service of the articles of charge and notices etc., at subsequent stages.

**23.2.** In an *ex-parte* proceedings the full enquiry has to be held *i.e.*, the Presenting Officer will produce documentary evidence and witnesses in the manner outlined in paragraphs 7 to 14 above. Notice of each hearing should be sent to the Government servant also.

### **24. Part-heard inquiries:**

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

**24.2.** However, if the new Inquiry Officer is of the opinion that a further or afresh examination of any of the witness 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 as in the manner described in paragraphs 8—11.

**24.3.** A standard form for appointment of new Inquiring Authority is given in the appendix.

### **25. Report of the Inquiry Officer:**

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

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

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

**25.4.** The report of the Inquiry Officer should contain:—

- (i) an introductory paragraph in which reference will be made about the appointment of the Inquiry Officer and the dates on which and the places where the inquiry was held;
- (ii) charges that were framed;
- (iii) charges which were admitted or dropped or not pressed, if any;
- (iv) charges that were actually enquired into;
- (v) brief statement of facts and documents which have been admitted;
- (vi) brief statement of the case of the disciplinary authority in respect of the charges enquired into;
- (vi) brief statement of the defence;
- (viii) points for determination;
- (ix) assessment of the evidence in respect of each point set out for determination and the 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 Government servant in his defence;
  - (c) list of witnesses examined in proof of the charges;
  - (d) list of defence witnesses;
- (xii) a folder containing depositions of witnesses arranged in the order in which they were examined;
- (xiii) a folder containing daily order sheet;
- (xiv) a folder containing written statement of defence, if any, written briefs filed by both sides, applications, if any, made in the course of the inquiry with orders thereon and orders passed on any request or representation made orally.

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

**25.6.** The Inquiry Officer will forward to the Vigilance Department his report together with the record of the enquiry including the exhibits and spare copies of the report as follows:—

- (i) as many copies as the number of accused;
- (ii) one copy for the Disciplinary Authority.

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

**25.8.** The Vigilance Department will then forward the required number of copies of the enquiry report and the accompanying papers to the disciplinary authority, together with its advice, regarding the further course of action to be taken by the Disciplinary Authority.

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**CHAPTER-XI**  
**DISCIPLINARY PROCEEDINGS—III (ACTION ON THE REPORT OF THE INQUIRING AUTHORITY)**

**1. Findings of the Disciplinary Authority:**

**1.1.** The report of the Enquiry Officer is intended to assist the disciplinary authority in coming to a conclusion about the guilt of the accused. Its findings are not binding on the disciplinary authority who can disagree with them and, come to its own conclusions on the basis of its own assessment of the evidence forming part of the record of the enquiry.

**1.2.** On receipt of the report and the record of the enquiry along with the advice of the Vigilance Department regarding the further course of action, the disciplinary authority will examine them carefully and dispassionately and after satisfying itself that the Government servant has been given a reasonable opportunity to defend himself will record its findings in respect of each article of charge saying whether, in its opinion, it stand proved or not. In case the disciplinary authority comes to a conclusion which is not in conformity with the advice of the Vigilance Department, it should refer the matter back to the Vigilance Department for reconsideration giving reasons why it disagrees with the advice of the Vigilance Department.

**1.3.** If the disciplinary authority in consultation with the Vigilance Department, disagrees with the findings of the Inquiry Officer on any article of charge, it will, while recording its own findings, also record the reasons for its disagreement.

**2. Further enquiry:**

If the disciplinary authority considers that there is any defect in the enquiry *e.g.* the inquiring authority had taken into consideration certain factors without giving the Government servant an opportunity to defend himself in that regard, the disciplinary authority may, for reasons to be recorded in writing, remit the case to the inquiring authority for further enquiry and report. The inquiring authority will then further enquire according to the provision of rule 14 of the CCA. Rules.

**3. Fresh enquiry:**

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

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

**3.3.** In this context the following observations of the Rajasthan High Court in *Dwarka Chand vs. State of Rajasthan* (A.I.R. 1959, Raj. 38) are relevant:—

"If we were to hold that a second departmental enquiry could be ordered after the previous one has resulted in the exoneration of a public servant the danger of harassment to the public servant would, in our opinion, be immense. If it were possible to ignore the result of an earlier departmental enquiry, then there will be nothing to prevent a superior officer, if he were so minded, to order a second or a third or a fourth or even a fifth departmental enquiry after the earlier ones had resulted in the exoneration of a public servant."

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

Having regard to its own findings on the articles of charge, if the disciplinary authority is of the opinion that the articles of charge have not been proved and that the Government servant should be exonerated, it will make an order to that effect and communicate it to the Government servant together with a copy of the report of the inquiring authority, its own findings on it and brief reasons for its disagreement, if any, with the findings of the Inquiring Authority. Where an officer has been exonerated after an oral enquiry has been held, a copy of the inquiry report should be furnished to him along with the communication exonerating him.

**5. Imposition of a minor penalty:**

**5.1.** If the disciplinary authority in consultation with the Vigilance Department is of the opinion that any of the minor penalties should be imposed on the Government servant it is not necessary to give any further show cause notice to the Government servant. In such cases in the interest of natural justice or otherwise.

**5.2.** If the disciplinary proceedings had been instituted by a higher authority competent to impose a major penalty and on the receipt of the report of the inquiring Authority it appears that a minor penalty will meet the ends of justice, the final order imposing a minor, penalty should be passed by the same higher disciplinary authority which had initiated the proceedings and not by the lower disciplinary authority though he may be competent to impose a minor penalty.

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

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

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

**6.1.** If the disciplinary proceedings were instituted by an authority competent to impose any of the minor penalties but not competent to impose a major penalty and if such authority in consultation with the Vigilance Department is of the opinion that any of the major penalties should be imposed on the Government servant, it will forward the record of the enquiry to the authority competent to impose a major penalty who will take further action to send the show cause notice to the Government servant (*vide* para 7 below).

**6.2.** If the disciplinary authority to which the records are so forwarded is of the opinion that a further examination of any witness is necessary in the interest of justice, it may, recall the witness and examine, cross-examine and re-examine the witness and may then take action for the imposition of such penalty as it may deem fit.

**7. Imposition of a major penalty—Show cause notice:**

**7.1.** If the disciplinary authority is of the opinion that any of the major penalties specified in clauses (v) to (ix) of rule 11 of CCA. Rules should be imposed upon the Government servant, the disciplinary authority will give the Government servant a reasonable opportunity to show cause against the penalty proposed to be imposed.

**7.2.** For this purpose the disciplinary authority will send to the delinquent Government servant:—

- (i) a notice, commonly called the show cause notice, stating the penalty proposed to be imposed on him and calling upon him to submit within 15 days of receipt of the notice or such further time not exceeding 15 days, as maybe allowed by the disciplinary authority, such representation as the Government servant may wish to make on the proposed penalty on the basis of the evidence adduced during the enquiry held under rule 14. A standard form of the show cause notice is given in the appendix;
- (ii) a copy of the report of the inquiring authority and a statement of the findings of disciplinary authority on each articles of charge together with brief reasons for disagreement, if any, with the findings of the inquiring authority.

**7.3.** If the Government servant did not appear in person before the inquiring authority or had refused to participate in the enquiry and the inquiry against him was held *ex-parte*, the record of the documentary and oral evidence led against him in support of the articles of charge should be made available to him, if he so requests.

**7.4.** The most essential part of the show cause notice is the punishment proposed to be imposed upon the Government servant. The disciplinary authority should give the conclusion in that regard in clear and specific terms. If the disciplinary authority is in doubt about which of the major penalties to specify, it may mention the higher or highest penalty. The notice will however, not be rendered void if more than one penalty is specified as an alternative. In *Hukam Chand vs. Union of India* the Supreme Court observed:

"We see nothing wrong in principle in the punishing authority tentatively forming the opinion that the charges proved merit any one of the three major penalties and on that footing asking the Government servant concerned to show cause against the punishment proposed to be taken in alternative in regard to him. To specify more than one punishment in the alternative does not necessarily make the proposed action any of the less definite on the contrary, it gives the Government servant better opportunity to show cause against each of those punishments being inflicted on him, which he would not have had if only the severest punishment had been mentioned and a lesser punishment not mentioned in the notice had been inflicted on him."

**7.5.** If the disciplinary authority proposes to take into consideration the Government servant's previous record and conduct while deciding on the quantum of punishment to be awarded without his having had a reasonable opportunity to show cause against such an action, the order of penalty would be vitiated as offending principles of natural justice.

**7.6.** The show cause notice should be signed by the authority competent to impose a major penalty and not by any lower authority.

### **8. Government servant's reply to the show-cause notice:**

**8.1.** In his reply to the show cause notice, the Government servant is entitled to make a representation:—

- (i) on the merits of the case showing *e.g.*—
  - (a) that the enquiry was vitiated by omission to follow the principles of natural justice. He may say, for example, that the Enquiry Officer was biased, or that he was given no facilities, etc., or
  - (b) that certain evidence had been wrongly excluded or that certain evidence had been introduced on behalf of the disciplinary authority without sufficient notice, or
  - (c) that the findings are not supported by the evidence in the proceedings or that the evidence against him is not worthy of credence; and
- (ii) on the quantum of punishment showing *e.g.*—
  - (a) that he is not guilty of any misconduct to merit any punishment at all; or
  - (b) that the punishment proposed could not be properly awarded on the findings arrived at and that the charges proved do not require the drastic punishment proposed to be awarded; or
  - (c) he may plead for mercy.

**8.2.** The Government servant must confine his representation at this stage to the evidence already adduced. No new evidence, documentary or oral, can be permitted to be produced.

**8.3.** The Government servant cannot demand at this stage an opportunity of making an oral representation or a repetition of the earlier stages, such as examination or cross-examination of witness. A reasonable opportunity in this regard had already been given to him during the oral enquiry.

**8.4.** On receipt of the reply of the Government servant the disciplinary authority should examine the record of the enquiry to see, if that the Government servant's contention, whether there is any substance in any points urged by him with regard to any flaws in the enquiry or in the assessment of the evidence on record. If the disciplinary authority is satisfied about the correctness or prosperity of any point made by the Government servant, it may allow him Such further opportunity as it may consider necessary to explain his position but not as an essential requirement.

**8.5.** The Government servant may seek to repeat, for the purpose of giving his reply, the process of inspection of documents or may ask for any additional documents. While the documents already produced during the enquiry may be allowed to be seen by him again, access to additional documents can be denied under rule 15 (4)(b).

**8.6.** If the Government servant brings in any extraneous matters in his reply to the show cause notice, such matters should be ignored.

### **9. Consultation with the Public Service Commission:**

In cases in which it is necessary to consult the Public Service Commission, the record of the enquiry, together with a copy of the show cause notice and the representation made by the Government servant in reply to it, if any, will be forwarded by the disciplinary authority to the Commission for advice (c.f. Chapter XVI).

### **10. Final order on the Report of Inquiring Authority:**

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

**10.2.** After considering the representation, if any, made by the Government servant in reply to the show cause notice and the advice of the Public Service Commissioner where the Public Service Commission is consulted, the disciplinary authority will decide whether the Government servant should be exonerated or whether a penalty should be imposed upon-

him and will make an order accordingly. It is open to the disciplinary authority to impose any of the minor penalties even after the representation to the show cause notice has been received. In para 10.2 of Chapter X it has been indicated that the disciplinary authority could after receiving inquiry report in cases initiated under rule 14 impose a minor penalty without having to issue a show cause notice.

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

**10.4.** The order should be signed by the disciplinary authority competent to impose the penalty, in a case in which the competent authority is the Government, the order should be signed by an officer authorised to authenticate order issued in the name of the Government under Article 166 of the Constitution. In any order imposing a formal penalty, the disciplinary authority should not refer to the advice given by the Vigilance Department.

### **11. Communication of order:**

**11.1.** The order made by disciplinary authority will be communicated to the Government servant together with—

- (a) a copy of the report of the inquiring authority, if not supplied already;
- (b) a statement of findings of the disciplinary authority on the inquiring authority's report together with brief reasons for its disagreement, if any, with the findings of the inquiring authority, if not supplied already;
- (c) a copy of the advice, if any, given by the Public Service Commission and where the Disciplinary Authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance.

**11.2.** A copy of the order will also be sent to—

- (i) the Vigilance Department;
- (ii) the Public Service Commission in cases in which that Commission had been consulted; and
- (iii) to the Head of Department or Office where the Government servant is employed for the time being unless the disciplinary authority itself is his Head of the Department or Office.

### **12. Imposition of a major penalty on a Government servant whose services have been borrowed from or lent to another department:**

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

### **13. Imposition of a lower penalty than that mentioned in the show-cause notice:**

When in the show-cause notice a graver punishment was proposed, the Disciplinary Authority may, after considering the representation received from the Government servant, award a lesser penalty. Such an order could not be questioned by the Government servant on the ground that he was not given an opportunity to show cause against the penalty actually imposed. In such a case the well known principle that "the greater contains the less" would apply. But if the punishment which was tentatively proposed in the show cause notice is of a lesser kind, the Government servant cannot be awarded a higher punishment except after giving him opportunity to show cause against the higher penalty proposed to be awarded.

### **14. Scope of order of punishment:**

When passing an order of punishment the disciplinary authority should define the scope of the punishment in clear terms.

### **15. Withholding of promotion:**

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

**15.2.** Promotion could be withheld permanently. The imposition of a punishment of a permanent nature should, however, be avoided as far as possible as it is destructive of incentive for good work and improvement.

**16. Recovery of pecuniary loss from pay of a Government servant:**

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

**17. Withholding of increments:**

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

**18. Reduction to a lower stage in the time-scale of pay for a specified period.**

Reduction to a lower stage in the time scale of pay can be ordered for a specified period only. In compliance with the requirements of rule 11 (v) of the CCA. Rules and F.R. 29 (/), when ordering a penalty of reduction to a lower stage in the time scale of pay, the disciplinary authority will indicate—

- (i) the date from which the order will take effect;
- (ii) the stage in the time scale of pay in terms of rupees to which the pay of the Government servant is to be reduced;
- (iii) the period, in terms of years and months, for which the penalty will be operative;
- (iv) whether the Government servant will earn increments of pay during the period of such reduction; and
- (v) whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay.

**19. Reduction to a lower time scale of pay, grade, post or service:**

**19.1.** The penalty of reduction to a lower time scale of pay, grade, post or service may be imposed by Disciplinary Authority for a specified period or for an unspecified period.

**19.2.** The order will give—

- (i) the lower time scale of pay, grade, post or service and stage of pay in the said lower time scale to which the Government servant is reduced;
- (ii) the date from which the order will take effect;
- (iii) where the penalty is imposed for a specified period, directions regarding conditions of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service.

**19.3.** If the order does not specify any period, it will be taken that the penalty is for an unspecified period and it will ordinarily be a bar to the promotion of the Government servant to the time scale of pay, grade, post or service from which he was reduced.

**20. Promotion during the currency of a punishment of withholding of increment or reduction to a lower stage in the time-scale of pay:**

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

**21. Imposition of two penalties:**

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

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## CHAPTER-XII

### DISCIPLINARY PROCEEDINGS—IV (MISCELLANEOUS)

#### **1. Travelling allowance to delinquent Government servant for attending hearings of departmental enquiries:**

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

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

#### **2. Travelling allowance to delinquent Government servant for journeys performed for inspection of records:**

**2.1.** A Government servant, whether on duty or on leave under suspension, against whom an oral enquiry is being held under the CCA. Rules may be allowed travelling allowance as for a journey on tour without any allowance for halts on journeys or at the outstations for the journeys undertaken by him to the stations where the official records are made available to him for inspection. The travelling allowance will be allowed from the headquarters of the Government servant or from any other place where the Government servant may be spending his leave or where the Government servant, if under suspension, had been permitted, at his own request, to reside but not exceeding that which would be admissible had the journey been undertaken from the headquarters of the Government servant.

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

- (1) the inquiring authority certifies that the official records to be consulted are relevant and essential for the Government servant's defence;
- (2) the competent authority certifies that the original records could not be sent to the headquarters station of the Government servant or the bulk of the documents rules out the possibility of copies being made out and sent; and
- (3) the head of office under whose administrative control the Government servant is working certifies that the journey was performed with his approval.

#### **3. Treatment of the period spent on journey and during inspection of records:**

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

#### **4. Travelling allowance to Government servants appearing as witnesses in departments! enquiries:**

**4.1.** A State Government servant who is called to give evidence in a departmental enquiry on behalf of the disciplinary authority or on behalf of the accused Government servant will be entitled to draw travelling allowance as for a journey on tour under S.R. 154 from the Office where he is serving for the time being. The travelling allowance claim will be supported by a certificate of attendance from the inquiring authority in the form given in tile Appendix.

**4.2.** If the witness is an employees of the Central Government or another State Government then he will be entitled to receive, in respect of the attendance before the authority holding the departmental enquiry, from the Central Government or the State Government such travelling allowance and/or daily allowance as may be admissible to him under the rules applicable to him in that behalf in respect of a journey undertaken on tour. The amount so paid shall be paid by the Himachal Pradesh Government to the Central Government or the State Government.

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

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

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

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

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

## **6. Travelling allowance to non-official witnesses:**

When a person who is not a Government servant is called to give evidence before an inquiring authority or a person who has ceased to be a Government servant is called to give evidence as to facts which came to his knowledge in the discharge of his public duties when he was a Government servant, he will be entitled to claim from the department/office under whom the Government servant against whom the enquiry is being held is for the time being serving, travelling allowance as for a journey on tour under S.R. 190. For this purpose the competent authority may, with due regard to such person's position in life, declare, by general or special order, the grade to which he shall be considered to belong. A competent authority may, in its discretion, grant to him is actual travelling, hotel and carriage expenses instead of travelling allowance if it considers that such allowance would be inadequate.

## **7. Travelling allowance to presenting officers and Government servants assisting the accused Government servant:**

A person appointed by disciplinary authority to present the case in support of the articles of charge before the inquiring authority and the person assisting the Government servant against whom the enquiry is held in presenting his case will be entitled to travelling allowance accordingly as they are Government servant or non-Government servant. They will be granted a certificate by the inquiring authority regarding their attending the enquiry in the form given in the appendix which will be attached to the T.A. Bill.

## **8. Travelling allowance to a Government servant for journeys to attend enquiries being conducted by A.C.U. or a departmental officer:**

When a Government servant, whether on duty or under suspension, performs a journey to attend an enquiry being conducted by A.C.U. or a departmental officer in a case in which he is suspected to be involved, he may be allowed travelling allowance as for a journey on tour provide the journey is performed under the direction of or with the approval of the head of the office in which he is for the time being employed or was employed before suspension.

## **9. Whether a disciplinary authority can initiate disciplinary proceedings if it has conducted the preliminary enquiry:**

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

## **10. Action against an employee of Central Government or another State Government after his reversion:**

If a Government servant who is an employee of the Central or another State Government while on deputation to the Himachal Pradesh Government commits a misconduct which is noticed only after his reversion to the parent Government, the disciplinary authority under whose control he was employed may make a preliminary enquiry and forward the relevant records to the Government concerned for institution of departmental proceedings and further necessary action.

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

In a case in which several Government servants are party to a misconduct, fraud or embezzlement but it is decided to prosecute only some of them in a court of law, it may be considered whether the Government servants, other than the principal offenders, against whom evidence was not found sufficient for prosecution but is sufficient enough for instituting disciplinary proceedings may be proceeded against departmentally immediately or after the result of the trial of the principal offenders is known. If the available evidence against such Government servants is sufficient, departmental proceedings

should not be deferred till the result of the court trial is known. If there are any documents which will figure both in the court case as also in disciplinary proceedings, photostat copies of such documents may be retained for production in the departmental proceedings before sending the documents to the court.

**12. Departmental action against a Government servant guilty of irregularities in matters concerning co-operative societies, clubs, etc.**

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

**13. Crossing of efficiency bar by a Government servant against whom department proceedings are pending:**

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

**14. Government servant to be informed if disciplinary proceedings are dropped before conclusion:**

Once disciplinary proceedings are initiated against a Government servant, the proceedings should not be closed without informing him. Accordingly, if it is proposed to drop the proceedings on receipt of the written statement of defence of the Government servant or at any other stage before the conclusion of the proceedings should be sent to the accused Government servant and also to the authorities concerned.

**15. Proceedings instituted for major penalty should be completed even if it is proposed to impose only a minor penalty:**

If in a disciplinary proceedings instituted under rule 14 of the CCA. Rules the disciplinary authority feels on receipt of the written statement of defence of the Government servant or at any other subsequent stage in the enquiry that only a minor penalty would be justified, no such order can be passed by the disciplinary authority in advance of the completion of the formal enquiry unless it is proposed to drop the proceedings. However, after the enquiry has been held, the disciplinary authority can impose a minor penalty without issuing a show cause notice.

**16. Action against a witness who departs from his original stand:**

If a Government servant who had made a statement in the course of a preliminary enquiry changes his stand during his evidence at the enquiry, and if such action on his part is without justification or with the object of favouring one or the other party, his conduct would constitute violation of rule 3 of the Conduct Rules rendering him liable for disciplinary action.

**17. Defect in proceedings at the show-cause notice stage will not invalidate earlier part of the proceedings:**

Once an enquiry has been properly held, a defect in the proceedings in the second stage, namely, at the stage of giving opportunity to the Government servant against the punishment proposed to be imposed upon him, will not necessarily affect the validity of the oral enquiry. It was held in *Lekh Raj vs. State* (A.I.R. 1959 M.P. 404) that where the order of dismissal was set aside on the ground that it was made by an authority subordinate to the appointing authority i.e., for contravention of Article 311 (1), the fresh proceedings could be restarted from the stage after the oral enquiry.

**18. Good and sufficient reasons:**

Any of the punishments specified in the CCA. Rules can be imposed by the competent authority for "good and sufficient reasons". What is good and sufficient 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 Lai vs. State* (A.I.R. 1959 Raj. L.W. 392), the dismissal of a Government servant on the ground that he had received some money from one person for being paid over to another, which he did, was set aside.

**19. Punishment cannot be awarded on the basis of mere suspicion:**

A penalty which under the rules can be imposed for "good and sufficient reasons" cannot be awarded on the basis of mere suspicion. In *Srinivasa vs. State* (A.I.R. 1961, M.L.J. 211), the Public Service Commission which was consulted before

the imposition of the punishment, as prescribed by the relevant rules, while agreeing to the punishment proposed by the disciplinary authority stated in its report that the evidence "leaves suspicion in the mind". It was no doubt open to the Government to take a different view from that of the Commission as regards the effect of the evidence and say that there was sufficient evidence. But, instead of doing so the Government simply proceeded to pass an order of punishment agreed to by the Commission. The Court held that the only conclusion to be drawn from these facts was that the punishment was imposed on the basis of mere suspicion and not for "good and sufficient cause" and accordingly set aside the order.

**20. Benefit of doubt—Effect on exoneration:**

Where the exoneration of a Government servant is on the ground that the charges were not established at all or were not established beyond doubt, it should make no difference in the resulting position since there can be no degrees in the matter of exoneration. Even when it is said that a Government servant has been given *the* benefit of doubt the decision in effect is that the allegations have been held not to be established. It would, therefore, not be right to invest mere doubt with any positive significance.

**21 . Notice for retirement on completing 55 years of age given to a Government servant against whom disciplinary proceedings are under way—Effect of exoneration:**

If a Government servant against whom disciplinary proceedings are contemplated or under way is given three months notice of retirement on attaining the age of 55 years and if at the conclusion of the disciplinary proceedings he is exonerated, his exoneration would not automatically imply the withdrawal of the notice of retirement. While in so far as the particular allegation in respect of which the disciplinary proceedings were initiated will be treated as having not been proved and could not therefore form the reason for his being given a notice for retirement, the retirement of an officer after giving him three months notice on his attaining the age of 55 years under F.R. 56 (j) is a matter of absolute discretion on the part of the Government and cannot be questioned by the Government servant. While Government would normally act with fairness and propriety even while exercising discretion in such cases, it does not follow that in cases where the notice of retirement was given when disciplinary action was contemplated or was under way against a Government servant, his exoneration at the end of the enquiry would automatically mean that the order of retirement should be set aside. It is open to Government to take into account its general assessment of the career of the Government servant and any other factors about his suitability which may have come to notice during the course of the enquiry or otherwise and to exercise its discretion to retire a Government servant under F.R. 46 (J) without assigning any reason.

**22. Reconsideration of a decision by successor disciplinary authority:**

When a decision is recorded by a disciplinary authority at the conclusion of the departmental proceedings, it cannot be varied by that authority itself or by its successor in office before it is formally communicated to the Government servant concerned.

**23. Propriety of holding a second enquiry after the orders passed on the first enquiry are quashed by a court of law:**

Normally the courts of law do not interfere in disciplinary matters on a question relating to the merits of the case. They generally interfere only when the proceedings are without jurisdiction or are characterized by a failure to give a fair opportunity to the Government servant to put forward his case or in other words where the principles of natural justice have not been conformed to. Where the disciplinary proceedings are quashed by a court of law for such consideration, there could be no objection to the holding of a fresh enquiry. If, however, in a particular case the court has gone into the merits of the case and has come to the conclusion that there was no evidence at all to support the findings of the inquiring authority, it would not be open to the disciplinary authority to hold a fresh enquiry, as a fresh enquiry would amount to re-opening the exoneration of the Government servant by a court of law after an examination of all material before it and after its findings that there was no evidence whatever to support the Inquiry Officer's findings.

**24. Final order copy to be placed on character roll;**

If as a result of disciplinary proceedings a punishment is imposed upon a Government servant a copy of the order should invariably be kept on the C.R. of the delinquent.

**25. Relaxation of time limits and condonation of delays:**

The authority competent to make an order under the CCA. Rules may, for good and sufficient reasons, or if sufficient cause is shown, extend the time specified in the rules for anything required to be done under the rules or condone any delay save as otherwise expressly provided in the rules (Rule 31 of CCA. Rules).

## **26. Publicity of names and particulars of officers involved:**

The following procedure should be observed in giving publicity of the names and particulars of officers involved in criminal prosecution/departmental proceedings:—

- (i) Where a case has been registered (R.C.) and an arrest made and a search carried out and something substantial is found (this precaution is necessary), there should be no objection to publicity being given to the designation or status of the person involved, the department to which he belongs and the nature of the allegations but no name need be given.
- (ii) When cases are taken to a court against an officer, publicity may be given as soon as the case is put in the court regarding the nature of offence and the designation of the officer. The name of the officer should not be published.
- (iii) When an officer has been convicted by a court of law, the main facts of the case and relevant details of the case should be given publicity as also the name and designation of the officer, and the sentence awarded.
- (iv) In cases which are not taken to a court but in which only departmental action is taken, no publicity should be given till the conclusion of such proceeding. However, statistics of disciplinary action taken against gazetted officers, should be published promptly.
- (v) In disciplinary cases not ending in dismissal or removal, publicity may be given to the designation of the officer, details of the case and the punishment awarded to him. In no case should the name be published. In disciplinary cases ending in dismissal or removal, the name, designation, department and all other particulars should be published. In cases where on appeal or review the penalty of dismissal or removal, is reduced to set aside, this may be given publicity if publicity was given about the original punishment of dismissal or removal.
- (vi) Publicity in respect of persons convicted or on whom a major punishment is inflicted should be done periodically over the radio and in the press, even by way of paid advertisements, under the caption "Do you know", "Corruption does not pay", etc. Such publicity should be done in respect of some past cases also.
- (vii) In all cases investigated by the Anti-Corruption Unit the information to be published should be got cleared from the Vigilance Department and where they so advise, it should be released unofficially.

## **27. Prosecution vis-a-vis departmental proceedings:**

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

## **28. Transfer pending disciplinary proceedings:**

If a Government servant against whom formal disciplinary proceedings have been initiated transferred from the jurisdiction of disciplinary authority "X" to the jurisdiction of disciplinary authority "Y" but continues to be in the same service, it is not necessary for the disciplinary authority "Y" to start *de novo* proceedings by framing and delivering fresh articles of charge. Disciplinary authority "Y" can carry on with the enquiry proceedings at the point where the transfer of the accused officer was effected.

## **29. Past misconduct:**

Action can be taken against an employee in respect of misconduct committed by him in his previous or earlier employment if the misconduct was of such a nature as has rational connection with his present employment and renders him unfit and unsuitable for continuing in service. When such action is taken, the charge should specifically state that the misconduct alleged is such that it renders him unfit and unsuitable for continuance in service.

## **30. Banning of business dealings with firms contractors:**

It has been decided that the use of word blacklisting should be avoided and instead business dealings with firms/contractors may be banned where necessary. The names of firms/contractors with whom business dealings are banned should not be published as the orders banning such business executive orders which are not even communicated to the firms/contractors concerned.

**CHAPTER-XIII**  
**ACTION AFTER RE-INSTATEMENT**  
*(See F. Rules 54, 54-A and 54-B)*

**1. Re-instatements**

A Government servant will be re-instated in service—

- (i) if he had been placed under suspension pending criminal or departmental proceedings against him and. is acquitted by the court of law or if the departmental proceedings instituted against him are withdrawn for any reason or if he is exonerated or is awarded a penalty other than that of - compulsory retirement, removal or dismissal from service;
- (ii) if the penalty of compulsory retirement, removal or dismissal from service imposed upon him is set aside by a court of law or by the appellate/reviewing authority.

**2. Orders to be passed on re-instatement:**

When a Government servant is re-instated in service, or would have been so re-instated but for his retirement on superannuation, the authority competent to order the re-instatement shall make a specific order—

- (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and
- (b) whether or not the said period shall be treated as a period spent on duty.

**3. When a Government servant who has been suspended is re-instated or would have been re-instated but for his retirement on superannuation while under suspension (See F.R. 54-B):**

**3.1.** A Government servant who has been suspended on account of court proceedings or disciplinary proceedings, may be re-instated either during the pendency of the court/disciplinary proceedings or after the conclusion of these proceedings by a competent authority.. Pay and allowances for the period of suspension etc. in such cases will be governed by F.R. 54-B.

**3.2.** In all cases where the authority competent to order re-instatement is of the opinion that the suspension was wholly unjustified, the Government servant shall be paid the full pay and allowances to which he would have been entitled, had he not been suspended and the period of suspension shall be treated as a period spent on duty for all purposes. But in case where the competent authority is of the opinion that the termination of the proceedings instituted against the Government servant, had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only, such proportion of such pay and allowances as it may determine.

**3.3.** In a case where a Government servant under suspension dies before the disciplinary/court proceedings instituted against him are included, the authority competent to order re-instatement shall treat the period between the date of suspension and the date of death 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 suspended subject to adjustment in respect of subsistence allowance already paid irrespective of anything contained in F.R. 53.

**3.4.** In cases where the competent authority is of the opinion that suspension of the Government servant was not wholly unjustified then the Government servant shall be paid such proportion of the full pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation if any, submitted by him in that connection within such period as may be specified in the notice.

**3.5.** In a case falling under sub-paragraph 3.4 the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose. However the competent authority may order that the period of suspension shall be converted into leave of any kind due and admissible to Government servant if the Government servant so desires. Such order of the competent authority shall be absolute and no higher sanction shall be necessary for the grant of -

- (a) extraordinary leave in excess of three months in the case of temporary Government servant; and
- (b) leave of any kind in excess of five years in the case of temporary quasi-permanent Government servant.

**3.6.** The payment of allowances under the above mentioned paragraphs shall be subject to all other conditions under which such allowances are admissible. The proportion of the full pay and allowances to be determined by the competent authority as mentioned in sub-paragraphs 3.2 and 3.4 shall not be less than the subsistence allowance and other allowances admissible under F.R. 53.

**3.7.** Where suspension is revoked pending finalisation of the disciplinary or court proceedings, any order passed under paragraph 2 before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned therein, who shall make an order as laid down in above sub-paragraphs according to the provisions of sub-rule (3) or sub-rule (5) of F.R. 54-B, as the case may be.

**4. When a Government servant who has been dismissed, removed or compulsorily retired is re-instated by an appellate/reviewing authority (F.R. 54):**

**4.1.** If the penalty of dismissal, removal, or compulsory retirement imposed in a departmental proceedings is set aside by the appellate/reviewing authority and no further enquiry is proposed to be held then the payment of pay and allowances for the period of absence from duty and the treatment of the period on duty or absence will be governed by F.R. 54.

**4.2.** In a case where the competent authority is of the opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall be entitled to—

- (i) full pay and allowances to which he would have been entitled had he not been dismissed, removed, or compulsorily retired or suspended, prior to such dismissal, removal or compulsory retirement, as the case may be, under sub-rule (2) of F.R. 54;
- (ii) the period of his absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, will be treated as period spent on duty for all purposes under sub-rule (3) of F.R. 54,

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay, only such proportion of such pay and allowances as it may determine.

**4.3.** In cases other than those covered by sub-paragraph 4.2 including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate/reviewing authority solely on the ground of non-compliance with the requirements of article 311 (2) of the Constitution and where no further enquiry is proposed to be held the Government servant shall be "entitled to such proportion of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed, and after considering the representation, if any, submitted with referenced the notice:

Provided that any payment under this sub-para shall be restricted to a period of three years immediately preceding re-instatement or retirement or superannuation, as the case may be.

**4.4.** The payment of allowances under sub-paras 4.2 and 4.3 shall be subject to all other conditions under which such allowances are admissible. The proportion of the full pay and allowances determined by the competent authority under para 4.3 and proviso to sub-para 4.2 shall not be less than the subsistence allowance and other allowances admissible under F.R. 53.

**4.5.** Any payment made under this para to a Government servant on his re-instatement shall be subject to adjustment of the amount earned if any, by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be and the date of re-instatement. Where the emoluments admissible under the rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the Government servant.

**4.6.** In all cases falling under sub-para 4.3. the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty. However, the competent authority may direct that the period of absence shall be treated as a period spent on duty for any specific purpose. It may also convert such period of absence into leave of any kind due and admissible to the Government servant on latter's request. Such order of the competent authority is absolute and no higher sanction is necessary for the grant of—

- (a) extraordinary leave in excess of three months in the case of temporary Government servant: and
- (b) leave of any kind in excess of five years in the case of temporary quasi-permanent Government servant.

**5. When a Government servant who has been dismissed, removed or compulsorily retired is re-instated after the order of dismissal etc., is set aside by a court of law (F.R. 54-A):**

**5.1.** In a case where a Government servant who has been dismissed, removed or compulsorily retired is re-instated after the order of dismissal etc., is set aside by a court of law and such Government servant is re-instated without holding any further enquiry, then the period of absence from duty shall be regularised and the Government servant shall be paid the pay and allowances in accordance with the provisions of sub-rule (2) or (3) of F.R. 54-A subject to the direction, if any, of the court.

**5.2.** In a case, if the competent authority is of the opinion that the Government servant has been fully exonerated by the court of law, then the payment of pay and allowances etc., shall be according to the procedure prescribed in subparagraphs 4.2, 4.4 and 4.5.

**5.3.** In other cases where the competent authority is of the opinion that the Government servant has not been fully exonerated and where no further enquiry is proposed to be held, then the payment of pay and allowances shall be according to the procedure prescribed in subparagraphs 4.3, 4.4 and 4.5.

**6. Conversion of the period of absence from duty into leave!**

In all cases where the competent authority is of the opinion that the Government servant has not been fully exonerated, the conversion of the period of absence from duty into leave with or without allowances will have the effect of vacating the order of suspension and it will be deemed not to have been passed at all. Therefore, if it is found that the total amount of subsistence and compensatory allowances drawn during the period of suspension exceeds the amount of leave salary and allowances admissible, the excess will have to be recovered.

**7. When acquittal by a court of law may be treated as exoneration by a competent authority:**

In law the expression "full exoneration" is not recognised or made use of it. It is for the authority competent to re-instate a Government servant to determine from the circumstances of each case whether the acquittal by a court of law should be taken to mean full exoneration or not, for example:—

- (i) if the entire available evidence was placed before the court and the court after & due consideration thereof came to the conclusion, that the Government servant concerned was not proved to be guilty on that score, he could ordinarily be deemed to have been acquitted of blame and fully exonerated;
- (ii) if the order of acquittal is recorded on grounds of technical flaw in the prosecution (*e.g.*, want of sanction to prosecute, misjoinder of charges, want of court's jurisdiction to try the case, etc.) or if the matter is not proceeded., with merely on technical grounds, the Government servant cannot be treated as fully exonerated. Likewise, if the available evidence could not be produced before the court, for example, owing to the death or unavailability of the material witnesses or destruction or unavailability of relevant documents and the prosecution for that reason failed to bring home the guilt of the accused, the acquittal cannot be regarded as honorable and the accused Government servant cannot be said to have been fully exonerated;
- (iii) when a Government servant who is detained in custody under any law providing for preventive detention and who is deemed to be under suspension on that account is subsequently re-instated without taking disciplinary proceedings against him, his pay and allowances for the period of suspension will be regulated under F.R. 54, 54-A, 54-B, as the case may be;
- (iv) in the case of a Government servant against whom proceedings had been taken for his arrest for debt but who was not actually detained in custody and who is placed under suspension on that account but ultimately it is proved that his liability arose from circumstances beyond his control, the case may be dealt with under F.R. 52 (2) otherwise under F.R. 54, 54-A, 54-B, as the case may be.

**8. Filling up of vacancies caused by dismissal etc. of Government servants:**

**8.1.** A permanent post vacated by the dismissal, removal or compulsory retirement of a Government servant should not be filled substantively until the expiry of the period of one year from the date of such dismissal, removal or compulsory retirement, as the case may be. The period of one year has been prescribed so as to ever the time that usually elapsed before the Government servant prefers an appeal and orders are passed on it by the competent authority. Where, on the expiry of the period of one year, the permanent post is filled and the original incumbent of the post is reinstated thereafter, he should be accommodated against any post which may be substantively vacant in the grade to which his previous substantive post belonged. If there is no such vacant post, he should be accommodated against a supernumerary post which should be created in that grade with proper sanction and with the stipulation that it would be terminated on the occurrence of the first substantive vacancy in that grade.

**8.2.** It is not necessary to keep a post vacant for a period of one year to provide for the contingency of subsequent reinstatement and confirmation in respect of a Government servant who at the time of dismissal, removal or compulsory retirement was not holding substantively a permanent post but would have been considered for confirmation but for the penalty imposed.

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**CHAPTER-XIV**  
**ACTION AGAINST PENSIONERS**

**1. Circumstances in which pension may be reduced, withheld or withdrawn:**

**1.1.** A pension is not in the nature of a reward. It is an obligation on Government which can be claimed by a retired Government servant as a right.

**1.2.** However, rule 6 of the CCS. (Pension) Rules, 1972 provides that the full pension admissible under the rules is not to be given, as a matter of course, unless the service rendered has been approved. If the service has not been thoroughly satisfactory, the authority sanctioning the pension can make such reduction in the amount of pension as it thinks proper.

**1.3.** After pension has been granted, future good conduct is an implied condition of its continued payment. Government can withhold or withdraw a pension or any part of it, if the pensioner is convicted of serious crime or is found guilty of grave misconduct [vide rules 8 and 9 of the CCS. (Pension) Rules, 1972J.

**1.4.** Under rule 9 of the C.C.S. (Pension) Rules, 1972, the Governor has reserved to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found, in any departmental or judicial proceedings, to have been guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment:

Provided that the Himachal Pradesh Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in sub-rule (5) of 49 of the CCS. (Pension) Rules, 1972.

**2. Action in cases in which departmental proceedings had been initiated before retirement:**

**2.1.** If departmental proceedings had been instituted against a Government servant under the CCA. Rules while he was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant be deemed to be proceeding under rule 9 of the C.C.S. (Pension) Rules, 1972, and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the Governor, that authority shall submit a report recording its findings to the Governor.

**2.2.** In a case in which Government decides to take further action under rule 9 of the C.C.S. (Pension) Rules, 1972, in the light of the findings of the disciplinary authority, the Government will serve the person concerned with a show cause notice specifying the action proposed to be taken under rule 9 of the C.C.S. (Pension) Rules, 1972, and the person concerned will be required to submit his reply to the show cause notice within such time as may be specified in the notice.

**3. Action in cases in which a Government servant has retired from service:**

**3.1.** If departmental proceedings had not been instituted *while the officer* was in service, including the period of his re-employment, if any, proceedings under rule 9 of the C.C.S. (Pension) Rules, 1972, can be instituted only —

- (a) by or with the sanction of the Governor, and
- (b) for a misconduct or misbehaviour in respect of any event which took place not earlier than four years before the institution of the proceedings.

**3.2-** The proceedings will be conducted by such authority and at such place as the Governor may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

**3.3.** A standard form of Memorandum of Charges to be served on the pensioner is given in the appendix. On receipt of his reply an inquiry will be held in accordance with the procedure prescribed in Chapter XI. On receipt of the report of the inquiring authority, if Government decides to take action under rule 9 of the C.C.S. (Pension) Rules, a show cause notice will be issued to the pensioner requiring him to submit a reply by a date to be specified in the show cause notice.

**3.4.** On receipt of the reply of the pensioner the Himachal Pradesh Public Service Commission will be consulted in all cases in which action is proposed to be taken under rule 9 of the C.C.S. (Pension) Rules, 1972. After considering the reply

of the pensioner and the advice of the Himachal Pradesh Public Service Commission, orders will be issued in the name of the Governor under the signature of an officer authorised to authenticate orders on behalf of the Governor.

#### **4. Judicial proceedings:**

**4.1.** If a Government servant is found guilty of a grave misconduct as a result of judicial proceedings instituted against him before his retirement, including re-employment, action may be taken against him by Government under rule 9 of the C.C.S. (Pension) Rules, 1972. Such action cannot, however, be taken on the results of any proceedings instituted after his retirement unless the proceedings relate to a cause of action which arose or an event which took place not more than four years before the date of the institution of such proceedings.

**4.2.** Unlike departmental proceedings, no sanction of the Governor is required for institution of judicial proceedings whether criminal or civil, after retirement of the Government servant.

**4.3.** The Himachal Pradesh Public Service Commission is to be consulted before making any order under rule 9 of the C.C.S. (Pension) Rules, 1972, on the basis of the results of any judicial proceedings.

#### **5. Determination of the date of institution of proceedings:**

**5.1.** A departmental proceeding will be deemed to have been instituted on the date on which the statement of charges is served to the Government servant or pensioner or if the Government servant has been placed under suspension from an earlier date, on such date, and judicial proceedings shall be deemed to be instituted—

- (a) in the case of criminal proceedings, on the date on which the complaint or report of police officer, on which the Magistrate takes cognizance, is made, and
- (b) in the case of civil proceedings, on the date the plaint is presented in the Court.

#### **6. Recovery from pension of pecuniary loss caused to Government:**

In cases where the Governor decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery should not ordinarily be made, at a rate exceeding one-third of the gross pension admissible on the date of retirement of a Government servant.

#### **7. Possession of disproportionate assets:**

The term "grave misconduct" used in rule 8 and 9 of the C.C.S. (Pension) Rules, 1972, is wide enough to include corrupt practices. In cases in which the charge of corruption on that ground is proved after pension has been sanctioned, action to withhold or withdraw the pension may be taken under rule 9 of the C.C.S. (Pension) Rules, 1972. If proceedings are to be instituted under rule 9 of the C.C.S. (Pension) Rules, 1972, after the final retirement of the Government servant, the property or pecuniary resources in respect of which the proceedings are to be instituted should have been acquired by the retired Government servant or by any other person on his behalf within a period of four years before the institution of such proceedings.

#### **8. Provisional payments to be made when action is taken under rule 9 of the C.C.S. (Pension) Rules, 1972:**

**8.1.** In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2) of rule 9, *provisional pension* as provided in rule 65 or rule 74 of the C.C.S. (Pension) Rules, 1972, as the case may be, shall be sanctioned.

**8.2.** When a Government servant is involved in any irregularity or loss, the authority investigating the case will bear in mind the provisions contained in rules 8 and 9 of the C.C.S. (Pension) Rules, 1972, as amended from time to time, and immediately inform the Audit Officer and/or the Accounts Officer as the case may be, responsible for reporting on his title to pension or death-cum-retirement gratuity and the authority competent to sanction pension or death-cum-retirement gratuity, and it will be duty of the latter to make a note of the information and see that in accordance with the provisions contained in the rules, gratuity or death-cum-retirement gratuity is not paid before a conclusion is arrived at as regards the Government servant's capability and final orders are issued thereon.

**9. Travelling allowance to a retired Government servant to attend departmental enquiry instituted against him:**

A retired Government servant who is required to attend departmental enquiry instituted against him under rule 9 of the C.C.S. (Pension) Rules, 1972, may be allowed travelling, allowance as on tour by the shortest route for the journey in connection with the enquiry from his "hometown" (declared as such for the purposes of Leave Travel Concession by State Government servants) to the place of enquiry and back or in case of a person concerned who has taken up residence after retirement at a place other than the 'home-town' (*vide* S.R. 146 and 147) for journeys from such place of residence to the place of enquiry and back. However, if at the time of receipt of summons, the retired Government servant is at a place different from his "hometown" or his place of residence, the travelling allowance should be restricted to the shorter of the two journeys between that place and the place of enquiry and between the "home-town"/ place of residence and the place of enquiry. The travelling allowance shall be allowed on the basis of the pay of the post held by the retired Government servant immediately prior to retirement. No advance of travelling allowance should be paid in connection with such journeys.

**10. Action, against officers of the All-India Services:**

Similar action against officers of the All-India services can be taken in accordance with the provisions of Rule 6 of the All-India Services (Death-cum-Retirement Benefit) Rules, 1958.'

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## CHAPTER XV

## CONSULTATION WITH HIMACHAL PRADESH PUBLIC SERVICE COMMISSION

**1. Constitutional provision:**

Article 320 (3)(c) of the Constitution provides that a State Public Service Commission shall be consulted on all disciplinary matters affecting a person serving under that State Government in a civil capacity, including memorials and petitions relating to such matters. However, the proviso to this Article provides that the Governor may make regulations specifying the matters in which either generally, or in any particular class of cases or in any particular circumstances, it shall not be necessary to consult the State Public Service Commission. Under the proviso to Article 320 (c) the Governor of Himachal Pradesh has made the Himachal Pradesh Public Service Commission (Exemption from Consultation) Regulations, 1973.

**2. Matters in which consultation with Himachal Pradesh Public Service Commission is necessary**

**2.1.** According to rule 9 of the H.P. Public Service Commission Regulations, 1973, it is necessary to consult the HP. Public Service Commission in disciplinary cases in regard to the following matters:—

- (a) an original order by the Governor imposing any of the following penalties:—
- (i) withholding of increments with cumulative effect;
  - (ii) reduction to a lower service, grade or post or to a time-scale or to a lower stage in time-scale;
  - (iii) compulsory retirement;
  - (iv) removal from service; and
  - (v) dismissal from service;
- (b) an order by the Governor on an appeal against an order imposing any of the penalties mentioned at (a) above;
- (c) an order by the Governor imposing any of the penalties mentioned at (a) above, in exercise of his powers of review and in modification of an order under which none of the said penalties has been imposed; and
- (d) an order by the Governor over-ruling or modifying, after consideration of any petition or memorial or otherwise an order imposing any of the penalties mentioned at (a) above made by the Governor or by a subordinate authority.

**2.2. The words "Governor" referred to in this Chapter imply "State Government"**

**2.3.** It is not necessary to consult the H.P. Public Service Commission in regard to the matters indicated in para 2.1 above if the order is issued by an authority other than the Governor.

**3. Procedure for consulting the Public Service Commission:**

**3.1.** In regard to the matters indicated in para 2.1 above, the Public Service, Commission is to be consulted at the stage and by supply of the papers as under:—

	1	2	3	4
	Type of disciplinary case	Stage at which Public service Commission to be consulted	Papers to be sent to the Commission	Other documents/papers that can be sent along with
1	An original order by the Governor withholding increments with cumulative effect.	After the receipt of the inquiry report and before imposing penalty	Record of the enquiry	Clarifications/cc comments (where necessary) to explain any factual/procedural points in the light of any remarks contained in the inquiry report. _____
2	An original order by the Governor imposing any of the following	After the issue of notice under clause (1) of sub-rule (4) of rule-15 of C.C. A. Rules and	Record of inquiry, a copy of notice given under clause(1)of sub-rule(4) of rule 15 of	A separate note giving clarification remarks or any factual or procedural points which may have

- penalties:—
- (i) reduction to lower service, grade or post or to a time scale or to a lower stage in time scale;
- (ii) compulsory retirement;
- (iii) removal from service ,
- (iv) dismissal from service
- 3 An order by the Governor or an appeal against an order imposing any of the penalties specified in Sr. Nos. 1 & 2 above.
- 4 An order by the Governor imposing any of the penalties at Sr. Nos. 1 & 2 above in exercise of his powers of review and in modification of an order under which none of the said penalties has been imposed.
- 5 An order by the Governor over-ruling or modifying, after consi-detation of any petition or memorial or otherwise an order imposing any of the penalties mentioned at Sr. Nos. 1 and 2 above made by the Governor or by a subordinate authority.
- receipt of the C.C.A. Rules, 1965, and the representation made by the Government servant, but before imposing penalty.
- Before issue of orders in all cases. In cases covered under provisos (iii)/(iv) of Rule 27 (2) of CCA. Rules the Commission will be consulted after the issue of notice as prescribed therein and on receipt of a representation of the Government servant thereto.
- Before issue of orders in all cases. In cases covered under 1st proviso to rule 29(1) Commission shall be consulted after an inquiry has been conducted, if necessary, and Government servant has been given an opportunity of making a representation against the proposed penalty.
- Before issue of orders
- the C.C.A. Rules, 1965, and the representation made in pursuance of such notice.
- Record of inquiry, a copy of the notice issued under provisos (Hi) & (iv) of Rule 27 (2) of CCA. Rules, 1965, and representation of the Government servant
- Record of inquiry, show cause notice, as required" under 1st proviso to rule 29 (2) of CCA. Rules, 1965, and representation of the Govesment servant in reply thereto
- A separate note or the forwarding letter indicating the considerations on account of which a modification or the order already passed is called for.
- been raised in the Government servants reply to the notice under rule 15 (4)(i) of the CCA. Rules, 1965. Merits of the case and findings on the charges and opinion regarding the penalty to be imposed not to be indicated in this note.
- No opinion is to be expressed
- A note containing Government's comments or any " factual procedural points raised by the Government servant in reply to the show cause notice without expressing any views regarding the findings or the penalty to be imposed.

3.2. While referring cases to the H.P. Public Service Commission, detailed particulars of the Government servant and the case shall be sent to the Commission in the proforma given in the appendix.

**4. Advice of the Himachal Pradesh Public Service Commission:**

4.1. The Himachal Pradesh Public Service Commission will send its advice with two spare copies..

4.2. In all cases where it is proposed not to accept the advice of the Public Service Commission or their recommendations, the matter shall be brought before the Council of Ministers as required under the provisions of the Government of Himachal Pradesh Rules of Business, 1971 for their final orders.

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**CHAPTER-XVI**  
**APPEALS, REVIEWS, PETITIONS AND MEMORIALS**

**1. Orders against which appeal: (Rule 23 of CCA. Rules, 1965):**

A Government servant, including a person who has ceased to be in Government service, may prefer an appeal against the following orders:—

- (i) an order of suspension made or deemed to have been made;
- (ii) an order imposing any of the prescribed penalties whether made by the disciplinary authority or by any appellate or reviewing authority;
- (iii) an order enhancing a penalty;
- (iv) an order which—
  - (a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or by agreement;
  - (b) interprets to his disadvantage the provisions of any such rule or agreement;
- (v) an order—
  - (a) stopping him at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;
  - (b) reverting him while officiating in a higher service, grade or post to a lower service, grade or post, otherwise than as a penalty;
  - (c) reducing or withholding the pension, including additional pension, gratuity and any other retirement benefit, or denying the maximum pension admissible to him under the rules;
  - (d) determining the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof;
  - (e) determining his pay and allowances—
    - (i) for the period of suspension, or
    - (ii) for the period from the date of his dismissal, removal, or compulsory retirement from service, or from the date of his reduction to a lower service, grade, post, time-scale or stage in a time-scale of pay, to the date of his re-instatement or restoration of his service, grade or post; or
  - (f) determining whether or not the period from the date of his suspension or from the date of his dismissal, removal, compulsory retirement or reduction to a lower-service, grade, post, time-scale of pay or stage in a time-scale of pay to the date of his reinstatement or restoration to his service, grade or post shall be treated as a period spent on duty for any purpose.

**2. Orders against which appeal does not lie (Rule 22 of CCA. Rules):**

No appeal lies against the following orders:—

- (i) any order made by the Governor;
- (ii) any order of interlocutory nature or of the nature of a step-in-aid or the final disposal of a disciplinary proceedings, other than an order of suspension;
- (iii) any order passed by an Inquiry Officer during the course of the enquiry.

**3. Appellate Authorities (Rule 24 of CCA. Rules):**

**3.1.** A Government servant, including a person who is no longer in Government service, may prefer an appeal against any order referred to in para 1 above to the appellate authority specified in this behalf in the Schedule to the CCA. Rules or by a general order or special order of the Governor. Where no such authority is specified, the appeal of class I or class II officers shall lie to the appointing authority, where the order appealed against is made by an authority subordinate to it; and to the Governor where such order is made by any other authority. An appeal from a Government servant of class III or class IV will lie to the authority to which the authority making the order appealed against is immediately subordinate.

**3.2.** Appeals against orders in common proceedings will lie to the authority to which the authority functioning as a disciplinary authority for the purpose of such proceedings is immediately subordinate. In cases where the authority after making an order becomes the appellate authority by virtue of his subsequent appointment or otherwise, appeal shall lie to the authority to which such an authority is immediately subordinate.

**3.3.** Where the Governor is the appellate authority and has on review confirmed the punishment imposed by a subordinate authority, an appeal will still lie to the Governor under rule 23/24 of CCA. Rules against the punishment order passed by the subordinate authority.

**4. Period of limitation for appeals (Rule 25 of CCA. Rules):**

No appeal shall be entertained unless it is preferred within a period of 45 days from the date on which a copy of the order appealed against is delivered to the appellant. However, the appellate authority may entertain the appeal even after the expiry of a period of 45 days 'if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

**5 Form and content of appeal (Rule 26 of CCA. Rules):**

Every appeal shall be preferred by the appellant in his own name and addressed to the authority to whom the appeal lies. It shall contain all material statements and arguments on which the appellant relies, shall not contain any disrespectful or improper language and shall be complete in itself.

**6 Channel of submission (Rule 26 of CCA. Rules):**

**6.1.** The appeal will be presented to the authority to whom the appeal lies, a copy being forwarded by the appellant to the authority which made the order appealed against.

**6.2.** The authority which made the order appealed against will on receipt of the copy of the appeal, forward the same to the appellate authority, without any avoidable delay and without waiting for any direction from the appellate authority, with all the relevant records and its comments on all points raised by the appellant. Mis-statement if any, should be clearly pointed out.

**7. Consideration of appeal (Rule 27 of CCA. Rules):**

In the case of an appeal against an order imposing any of the penalties specified in rule H of CCA, Rules or enhancing any penalty imposed, the appellate authority, while considering the appeal, should see.

- (i) whether the procedure laid down in the rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution or in the failure of justice;
- (ii) whether the findings of the disciplinary authority are warranted by the evidence on the record of the case; and
- (iii) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe.

**8.Orders by appellate authority (Rule 27 of CCA. Rules):**

In the light of its findings the appellate authority may pass an order

- (i) confirming, enhancing, reducing or setting aside the penalty; or
- (ii) remitting the case to that authority which imposed of enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

**9.Procedure when a minor penalty is proposed to be enhanced to a major penalty (Sale 27 of CCA, Rules):**

If the appellate authority proposes to enhance the penalty and if the enhanced penalty is one of the major penalties and an enquiry according to the procedure laid down in rule 14of CCA. Rules has not already been held in the case, the appellate authority shall itself hold such enquiry or direct that such enquiry be held in accordance with the provisions of rule 14 and thereafter on a consideration of the proceedings of such enquiry and after giving the appellant a reasonable opportunity of making a representation against the penalty proposed on the basis of the evidence adduced during such enquiry make such orders as it may deem fit.

**10.Procedure when it is proposed to impose a higher major penalty than that already imposed (Rule 27 of CCA. Rules):**

If the appellate authority proposes to impose a higher major penalty than that already imposed and an inquiry under rule 14 has already been held in the case, the appellate authority will, after giving the appellant a reasonable opportunity of making a representation against the enhanced penalty proposed on the basis of the evidence adduced during the inquiry, make such orders as it may deem fit.

**11. When it is proposed to impose a higher minor penalty than that already imposed (Rule 27 of CCA. Rules):**

No order imposing a higher minor penalty than that already imposed in the departmental proceedings will be. made unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of rule 16 of CCA. Rules, of making a representation against such enhanced penalty.

**12. Consultation with Public Service Commission:**

The Himachal Pradesh Public Service Commission will be consulted before orders are passed in all cases where consultation is necessary.

**13. Implementation of orders in appeal (Rule 28 of CCA. Rules):**

The authority which made the order appealed against shall give effect to the orders passed by the appellate authority.

**14. Authorities competent to make a review (Rule 29 of CCA. Rules):**

**14.1.** The following authorities may at any time, either on their own or otherwise, call for records of any enquiry and review any order made under the CCA. Rules:—

- (1) the Governor, or
- (2) the head of a department in the case of a Government servant serving in a department under the control of such head of a department, or
- (3) the appellate authority, within six months of the date of the order proposed to be reviewed, or
- (4) any other authority specified in this behalf by the Government by a general or special order and within such time as may be prescribed in such general order or special order,

**14.2.** A reviewing authority after passing an order of review becomes *functus officio* and cannot again review its own order. However, a superior reviewing authority can review the order passed by an inferior reviewing authority. The Governor can review any order, including an order made by him in review.

**15. Orders by the reviewing authority (Rule 29 of CCA. Rules):**

**15.1.** After considering all the facts and circumstances of the case and the evidence on record the reviewing authority may pass any of the following orders:—

- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other orders as it may deem fit.

**15.2.** If the penalty proposed to be imposed after review including enhancement of penalty, is a minor penalty, the Government servant concerned shall be given a reasonable opportunity of making a representation against the action proposed. In cases the penalty proposed to be imposed by enhancing the penalty already imposed or otherwise is a major penalty, the Government servant concerned shall be afforded reasonable opportunity and oral enquiry will be held. The Government servant will also be given an opportunity of showing cause against the penalty proposed on the evidence adduced during enquiry.

**16. Procedure for review (Rule 29 of CCA. Rules):**

**16.1.** An application for review will be dealt with as if it were an appeal under the CCA. Rules.

**16.2.** The reviewing authority will not review a case until after the expiry of the period of limitation for an appeal or if an appeal has been preferred already until after the disposal of the appeal.

**17. Petitions, memorials addressed to the Governor:**

Petitions and memorials addressed to the Governor are to be dealt with under the provisions of the Rules of Business of the Government of Himachal Pradesh.

**APPENDIX I****COPIES OF OR EXTRACTS FROM ACTS, RULES, REGULATIONS ETC.****THE PREVENTION OF CORRUPTION ACT, 1988**

[Act No. 49 of 1988 dated 9th. September, 1988]

*An Act to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith.*  
BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows: -

**CHAPTER I:  
PRELIMINARY**

**1. Short title and extent** - (1) This Act may be called the Prevention of Corruption Act, 1988.

(2) It extends to the whole of India except the State of Jammu and Kashmir and it applies also to all citizens of India outside India.

**2. Definitions**

In this Act, unless the context otherwise requires,-

- (a) "election" means any election, by whatever means held under any law for the purpose of selecting members of Parliament or of any Legislature, local authority or other public authority;
- (b) "public duty" means a duty in the discharge of which the State, the public or the community at large has an interest;

Explanation.-In this clause "State" includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956.

(c) "Public servant" means-

- (i) Any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
- (ii) Any person in the service or pay of a local authority ;
- (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;
- (iv) Any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;
- (v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;
- (vi) Any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;
- (vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;
- (viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;
- (ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;
- (x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;
- (xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

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

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

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

## **CHAPTER II: APPOINTMENT OF SPECIAL JUDGES**

### **3. Power to appoint special Judges:-**

(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely: -

(a) any offence punishable under this Act; and

(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973.

### **4. Cases triable by special Judges:-**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried by special Judges only.

(2) Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis.

### **5. Procedure and powers of special Judge:-**

(1) A special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973, for the trial of warrant cases by Magistrates.

(2) A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge, relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973, be deemed to have been tendered under section 307 of that Code.

(3) Save as provided in sub-sections (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973, shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for the purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of sections 326 and 475 of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate.

(5) A special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.

(6) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944.(Ord. 38 of 1944)

## **6. Power to try summarily :-**

(1) Where a special Judge tries any offence specified in sub-section (1) of section 3, alleged to have been committed by a public servant in relation to the contravention of any special order referred to in sub-section (1) of section 12A of the Essential Commodities Act, 1955 or of an order referred to in clause (a) of sub-section (2) of that section, then, notwithstanding anything contained in sub-section (1) of section 5 of this Act or section 260 of the Code of Criminal Procedure, 1973, the special Judge shall try the offence in a summary way, and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the special Judge to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the special Judge that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the special Judge shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re-hear the case in accordance with the procedure prescribed by the said Code for the trial of warrant cases by Magistrates.

(2) Notwithstanding anything to the contrary contained in this Act or in the code of Criminal Procedure, 1973, there shall be no appeal by a convicted person in any case tried summarily under this section in which the special Judge passes a sentence of imprisonment not exceeding one month, and of fine not exceeding two thousand rupees whether or not any order under section 452 of the said Code is made in addition to such sentence, but an appeal shall lie where any sentence in excess of the aforesaid limits is passed by the special Judge.

## **CHAPTER III: OFFENCES AND PENALTIES**

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

#### **Explanations.-**

- (a) "Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a 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 gratifications or to gratifications estimable in money.
- (c) "Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.
- (d) "A motive or reward for doing." A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.
- (e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

### **8. Taking gratification, in order, by corrupt or illegal means, to influence public servant**

Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt 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 for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

### **9. Taking gratification, for exercise of personal influence with public servant**

Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any 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 for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

### **10. Punishment for abetment by public servant of offences defined in section 8 or 9**

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

### **11. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant**

Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

### **12. Punishment for abetment of offences defined in section 7 or 11**

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

### **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 interested 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 a 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.

#### **14. Habitual committing of offence under sections 8, 9 and 12**

Whoever habitually commits-

- (a) an offence punishable under section 8 or section 9; or  
 (b) an offence punishable under section 12, shall be punishable with imprisonment for a term which shall be not less than two years but which may extend to seven years and shall also be liable to fine.

#### **15. Punishment for attempt**

Whoever attempts to commit an offence referred to in clause (c) or clause (d) of sub-section (1) of section 13 shall be punishable with imprisonment for a term which may extend to three years and with fine.

#### **16. Matters to be taken into consideration for fixing fine**

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

### **CHAPTER IV:**

#### **INVESTIGATION INTO CASES UNDER THE ACT**

#### **17. Persons authorised to investigate:-**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank,-

- (a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;  
 (b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973, of an Assistant Commissioner of Police;  
 (c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank,

shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefore without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:

Provided further that an offence referred to in clause (e) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

#### **18. Power to inspect bankers' books**

If from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under section 17 and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers' books, then, notwithstanding anything contained in any law for the time being in force, he may inspect any bankers' books in so far as they relate to the accounts of the persons suspected to have committed that offence or of any other person suspected to be holding money on behalf of such person, and take or cause to

be taken certified copies of the relevant entries therefrom, and the bank concerned shall be bound to assist the police officer in the exercise of his powers under this section:

Provided that no power under this section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a superintendent of Police.

Explanation-In this section, the expressions "bank" and "bankers' books" shall have the meanings respectively assigned to them in the Bankers' Books Evidence Act, 1891.

## **CHAPTER V: SANCTION FOR PROSECUTION AND OTHER MISCELLANEOUS PROVISIONS**

### **19. Previous sanction necessary for prosecution**

(1) No court shall take cognizance of an offence punishable under section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-

- (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his 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.(2 of 1976),-

- (a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;
- (b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;
- (c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(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.

### **20. Presumption where public servant accepts gratification other than legal remuneration:**

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or

attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-section (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

### **21. Accused person to be a competent witness :**

Any person charged with an offence punishable under this Act, shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that-

- (a) he shall not be called as a witness except at his own request;
- (b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;
- (c) he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless-
  - (i) the proof that he has committed or been convicted of such offence is admissible evidence to that he is guilty of the offence with which he is charged, or
  - (ii) he has personally or by his pleader asked any question of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution, or
  - (iii) he has given evidence against any other person charged with the same offence.

### **22. The Code of Criminal Procedure, 1973 to apply subject to certain modifications:**

The provisions of the Code of Criminal Procedure, 1973, shall in their application to any proceeding in relation to an offence punishable under this Act have effect as if,-

- (a) in sub-section (1) of section 243, for the words "The accused shall then be called upon", the words "The accused shall then be required to give in writing at once or within such time as the Court may allow, a list of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and he shall then be called upon" had been substituted;
- (b) in sub-section (2) of section 309, after the 'third proviso, the following proviso had been inserted, namely:-  
"Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under section 397 has been made by a party to the proceeding.";
- (c) after sub-section (2) of section 317, the following sub-section had been inserted, namely:-  
"(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judge may, if he thinks fit and for reasons to be recorded by him, proceed with inquiry or trial in the absence of the accused or his pleader and record the evidence of any witness subject to the right of the accused to recall the witness for cross-examination.";
- (d) in sub-section (1) of section 397, before the Explanation, the following proviso had been inserted, namely:-  
"Provided that where the powers under this section are exercised by a Court on an application made by a party to such proceedings, the Court shall not ordinarily call for the record of the proceedings:-  
(a) without giving the other party an opportunity of showing cause why the record should not be called for; or  
(b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies."

### **23. Particulars in a charge in relation to an offence under section 13(1) (c):**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, when an accused is charged with an offence under clause (c) of sub-section (1) of section 13, it shall be sufficient to describe in the charge the property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219 of the said Code:

Provided that the time included between the first and last of such dates shall not exceed one year.

### **24. Statement by bribe giver not to subject him to prosecution**

Notwithstanding anything contained in any law for the time being in force, a statement made by a person in any proceeding against a public servant for an offence under sections 7 to 11 or under section 13 or section 15, that he offered or agreed to offer any gratification (other than legal remuneration) or any valuable thing to the public servant, shall not subject such person to a prosecution under section 12.

## **25. Military, Naval and Air Force or other law not to be affected**

(1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under the Army Act, 1950, the Air Force Act, 1950, the Navy Act, 1957, the Border Security Force Act, 1968, the Coast Guard Act, 1978 and the National Security Guard Act, 1986.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), the court of a special Judge shall be deemed to be a court of ordinary criminal justice.

## **26. Special Judges appointed under Act 46 of 1952 to be special Judges appointed under this Act**

Every special Judge appointed under the Criminal Law Amendment Act, 1952, for any area or areas and is holding office on the commencement of this Act shall be deemed to be a special Judge appointed under section 3 of this Act for that area or areas and, accordingly, on and from such commencement, every such Judge shall continue to deal with all the proceedings pending before him on such commencement in accordance with the provisions of this Act.

## **27. Appeal and revision**

Subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973 on a High Court as if the court of special Judge were a court of Session trying cases within the local limits of the High Court.

## **28. Act to be in addition to any other law**

The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him.

## **29. Amendment of the Ordinance 38 of 1944**

In the Criminal Law Amendment Ordinance, 1944,-

- (a) in sub-section (1) of section 3, sub-section (1) of section 9, clause (a) of section 10, sub-section (1) of section 11 and sub-section (1) of section 13, for the words "State Government", wherever they occur, the words "State Government or, as the case may be, the Central Government" shall be substituted;
- (b) in section 10, in clause (a), for the words "three months", the words "one year" shall be substituted;
- (c) in the Schedule,-
  - (i) paragraph 1 shall be omitted;
  - (ii) in paragraphs 2 and 4,-
    - (a) after the words "a local authority", the words and figures "or a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company as defined in section 617 of the Companies Act, 1956 or a society aided by such corporation, authority, body or Government company" shall be inserted;
    - (b) after the words "or authority", the words "or corporation or body or Government company or society" shall be inserted;
  - (iii) for paragraph 4A, the following paragraph shall be substituted, namely: -  
"4A. An offence punishable under the Prevention of Corruption Act, 1988.";
  - (iii) in paragraph 5, for the words and figures "items 2, 3 and 4", the words, figures and letter "items 2, 3, 4 and 4A" shall be substituted.

## **30. Repeal and saving**

(1) The Prevention of Corruption Act, 1947 and the Criminal Law Amendment Act, 1952 are hereby repealed.

(2) Notwithstanding such repeal, but without prejudice to the application of section 6 of the General Clauses Act, 1897, anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so

repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken, under or in pursuance of the corresponding provision of this Act.

**31. Omission of certain sections of Act 45 of 1860**

Section 161 to 165A (both inclusive) of the Indian Penal Code, 1860 (45 of 1860) shall be omitted and section 6 of the General Clauses Act 1897 (10 of 1897), shall apply to such omission as if the said sections had been repealed by a Central Act.

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**THE CENTRAL CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL)  
RULES, 1965**

**PART I – GENERAL**

**1. Short title and commencement:**

- (1) These rules may be called the Central Civil Service (Classification, Control and Appeal) Rules, 1965.
- (2) They shall come into force on the 1<sup>st</sup> December, 1965.

**2. Interpretation:**

In these rules, unless the context, otherwise requires,-

- (a) “appointing authority” in relation to a Government servant means-
  - (i) the authority empowered to make appointments to the service of which the Government servant is for the time being a member or to the grade of the service in which the Government servant is for the time being included, or
  - (ii) the authority empowered to make appointments to the post which the Government servant for the time being holds, or
  - (iii) the authority which appointed the Government servant to such service, grade or post, as the case may be, or
  - (iv) where the Government servant having been a permanent member of any other service or having substantively held any other permanent post, has been in continues employment of the Government, the authority which appointed him to that service or to any grade in that service or to that post, whichever authority is the higher authority;
- (b) “a cadre authority”, in relation to a service, has the same meaning as in the rules regulating that service;
- (c) “Central Civil Service and Central Civil post” includes a civilian service or civilian post, as the case may be, of the corresponding class in the Defence Services;
- (d) “Commission” means the Union Public Service Commission;
- (e) “Defence Services” means services under the Government of India in the Ministry of Defence, paid out of the Defence Services Estimates, and not subject to the Army Act, 1950 (46 of 1950) the Navy Act, 1957 (62 of 1957), and the Air Force Act, 1950 (45 of 1950);
- (f) “Department of the Government of India” means any establishment or Organisation declared by the President by a notification in the Official Gazette to be a Department of the Government of India;
- (g) “disciplinary authority” means the authority competent under these rules to impose on a Government servant any of the penalties specified in rule 11;
- (h) “Government servant” means a person who-
  - (i) is a member of a service or holds a civil post under the Union, and includes any such person on foreign service or whose services are temporarily placed at the disposal of a State Government, or a local or other authority;
  - (ii) is a member of a service or holds a civil post under a State Government and whose services are temporarily placed at the disposal of the Central Government;
  - (iii) is in the service of a local or other authority and whose services are temporarily placed at the disposal of the Central Government;
- (i) “Head of the Department” for the purpose of exercising the powers as appointing, disciplinary, appellate or reviewing authority, means the authority declared to be the head of the department under the Fundamental and Supplementary Rules or the Civil Service Regulations, as the case may be;

- (j) “Head of the Office”, for the purpose of exercising the powers as appointing, disciplinary, appellate or reviewing authority, means the authority declared to be the head of the office under the General Financial Rules;
- (k) “Schedule” means the Schedule to these rules;
- (l) “Secretary” means a Secretary to the Government of India in any Ministry or Department, and includes-
- (i) a Special Secretary or an Additional Secretary,
  - (ii) a Joint Secretary placed in independent charge of a Ministry or Department,
  - (iii) in relation to the Cabinet Secretariat, the Secretary to the Cabinet,
  - (iv) in relation to the President’s Secretariat, the Secretary to the President, or, as the case may be, the Military Secretary to the President,
  - (v) in relation to the Prime Minister’s Secretariat, the Secretary to the Prime Minister, and
  - (vi) in relation to the Planning Commission, the Secretary to the Planning Commission;
- (m) “Service” means a civil service of the Union.

### 3. Application:

- (1) These rules shall apply to every Government servant including every civilian Government servant in the Defence Services, but shall not apply to-
- (a) any railway servant, as defined in rule 102 of Volume 1 of the Indian Railway Establishment Code,’
  - (b) any member of the All-India Service,
  - (c) any person in casual employment,
  - (d) any person subject to discharge from service on less than one month’s notice,
  - (e) any person for whom special provisions is made, in respect of matters covered by these rules, by or under any law for the time being in force or under any agreement entered into by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions.
- (2) Notwithstanding anything contained in sub-rule (1), the President may by order exclude any class of Government servants from the operation of all or any of these rules.
- (3) Notwithstanding anything contained in sub-rule (1), or the Indian Railway Establishment Code, these rules shall apply to every Government servant temporarily transferred to a service or post coming within exception (a) or (e) in sub-rule (1), to whom, but for such transfer, these rules would apply.
- (4) If any doubt arises-
- (a) whether these rules or any of them apply to any person, or
  - (b) whether any person to whom these rules apply belongs to a particular service, the matter shall be referred to the President who shall decide the same.

## PART II - CLASSIFICATION

### 4. Classification of service:

4. (1) The Civil services of the Union shall be classified as follows:-
- (i) Central Civil Services, Class I;
  - (ii) Central Civil Services, Class II;
  - (iii) Central Civil Services, Class III;
  - (iv) Central Civil services, Class IV.

(2) If a service consists of more than one grade, different grades of such services may be included in different classes.

**5. Constitution of Central Civil Services:**

The Central Civil Services, Class I, Class II, Class III and Class IV shall consist of the services and grades of services specified in the Schedule.

**6. Classification of post:**

(1) Civil posts under the Union other than those ordinarily held by persons to whom these rules do not apply, shall by a general or special order of the President, be classified as follows:-

- (i) Central Civil Posts, Class I;
- (ii) Central Civil Posts, Class II;
- (iii) Central Civil Posts, Class III;
- (iv) Central Civil Posts, Class IV.

(2) Any order made by the competent authority, and in force immediately before the commencement of these rules, relating to classification of civil posts under the Union shall continue to be in force until altered, rescinded or amended by an order made by the President under sub-rule (1).

**7. General Central Service:**

Central Civil Posts of any class not included in any other Central Civil Service shall be deemed to be included in the General Central Service of the corresponding class and a Government servant appointed to any such post shall be deemed to be a member of that service unless he is already a member of any other Central Civil Service of the same class.

**PART III – APPOINTING AUTHORITY**

**8. Appointments to Class I services and posts:**

All appointments to Central Civil Services, Class I, and Central Civil Posts, Class I, shall be made by the President:

Provided that the President may, by a general or a special order and subject to such conditions as he may specify in such order, delegate to any other authority the power to make such appointments.

**9. Appointments to other services and posts:**

All appointments to the Central Civil Services (other than the General Central Services) Class II, Class III and Class IV, shall be made by the authorities specified in this behalf in the Schedule:

Provided that in respect of Class III and Class IV civilian services or civilian posts in the Defence Services, appointments may be made by officers empowered in this behalf by the aforesaid authorities.

(2) All appointments to Central Civil Posts, Class II, Class III and Class IV included in the General Central Service shall be made by the authorities specified in that behalf by a general or special order of the President, or where no such order has been made, by the authorities specified in this behalf in the Schedule.

**PART IV – SUSPENSION**

**10.** (1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President by general or special order, may place a Government servant under suspension –

- (a) where a disciplinary proceeding against him is contemplated or is pending; or
- (aa) where, in the opinion of the authority of aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or
- (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, except in case of an order of suspension made by the Comptroller and Auditor General in regard to member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant General or equivalent (other than a regular member of the Indian Audit and Accounts Service), where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

- (2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority-
- (a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;
  - (b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

**Explanation-** The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5) (a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceedings or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reason to be recorded by him in writing, direct that the Government servant shall continue to be under suspension, until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under his rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

## **PART V – PENALTIES AND DISCIPLINARY AUTHROTIES**

### **II. Penalties:**

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely :-

Minor penalties:

- (i) Censure;
- (ii) withholding of his promotion;
- (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;
- (iv) withholding of increments of pay;

**Major Penalties:**

- (v) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;
- (vi) reduction to a lower time-scale of pay/grade, post or service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay grade, post or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service;
- (vii) compulsory retirement;
- (viii) removal from service which shall not be a disqualification for future employment under the Government;
- (ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

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

- (i) withholding of increments of pay of a Government servant for his failure to pass any departmental examination in accordance with the rules or orders governing the service to which he belongs or post which he holds or the terms of his appointment;
- (ii) stoppage of a Government servant at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;
- (iii) non-promotion of a Government servant, whether in a substantive or officiating capacity, after consideration of his case, to a service, grade or post for promotion to which he is eligible;
- (iv) reversion of a Government servant officiating in a higher service, grade, or post to a lower service, grade or post, on the ground that he is considered to be unsuitable for such higher service. Grade or post or on any administrative ground unconnected with his conduct;
- (v) reversion of a Government servant, appointed on probation to any other service, grade or post, to his permanent service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing such probation;
- (vi) replacement of the services of a Government servant, whose services had been borrowed from a State Government or an authority under the control of a State Government, at the disposal of the State Government or the authority from which the services of such Government servant had been borrowed;
- (vii) compulsory retirement of a Government servant in accordance with the provisions relating of his superannuation or retirement;
- (viii) termination of the services-
  - (a) of a Government servant appointed on probation, during or at the end of the period of his probation, in accordance with the terms of his appointment or the rules and orders governing such probation; or
  - (b) of a temporary Government servant in accordance with the provisions of sub-rule (1) of rule 5 of the Central Civil Services (Temporary Service) Rules, 1965; or
  - (c) of a Government servant, employed under an agreement, in accordance with the terms of such agreement.

**12. Disciplinary Authorities:**

- (1) The President may impose any of the penalties specified in rule 11 on any Government servant.

(2) Without prejudice to the provisions of sub-rule (1), but subject to the provisions of sub-rule (4), any of the penalties specified in rule 11 may be imposed on-

- (a) a member of a Central Civil Service other than the General Central Service, by the appointing authority or the authority specified in the Schedule in this behalf by any other authority empowered in this behalf by a general or special order of the President;
- (b) a person appointed to a Central Civil Post included in the General Central Service, by the authority specified in this behalf by a general or special order of the President or, where no such order has been made, by the appointing authority or the authority specified in the schedule in this behalf.

(3) Subject to the provisions of sub-rule (4), the power to impose any of the penalties specified in rule 11 may also be exercised, in the case of a member of a Central Civil Service, Class I II (other than the Central Secretariat Clerical Service), or a Central Civil Service, Class IV-

- (a) if he is serving in a Ministry or Department of the Government of India, by the Secretary to the Government of India, in that Ministry or Department, or
- (b) if he is serving in any other office, by the head of that office, except where the head of that office is lower in rank than the authority competent to impose the penalty under sub-rule (2).

**(4) Notwithstanding anything contained in this rule,-**

- (a) Except where the penalty specified in clause (v) or clause (vi) of rule 11 is imposed by the Comptroller and Auditor General on a member of the Indian Audit and Accounts Service, no penalty specified in clauses (v) to (ix) of that rule shall be imposed by any authority subordinate to the appointing authority.
- (b) Where a Government servant who is a member of a service other than the General Central Service or who has been substantively appointed to any civil post in the General Central Service, is temporarily appointed to any other service or post, the authority competent to impose on such Government servant any of the penalties specified in clauses (v) to (ix) or rule 11 shall not impose any such penalties unless it has consulted such authority, not being an authority subordinate to it, as would have been competent under sub-rule (2) to impose on the Government servant any of the said penalties had he not been appointed to such other service or post.

Explanation- Where a Government servant belonging to a service or holding a Central Civil Post of any class, is promoted, whether on probation or temporarily to the service or Central Civil Post of the next higher class, he shall be deemed for the purposes of this rule to belong to the service of, or hold the Central Civil Post, of such higher class.

### **13. Authority to institute proceedings:**

- (1) The President or any other authority empowered by him by general or special order may-
  - (a) institute disciplinary proceedings against any Government servant;
  - (b) direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is competent to impose under these rules any of the penalties specified in rule 11.

(2) A disciplinary to (iv) of rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in clauses (v) to (ix) of rule 11 notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties. authority competent under these rules to impose any of the penalties specified in clauses (i)

## **PART VI – PROCEDURE FOR IMPOSING PENALTIES**

### **14. Procedure for imposing major penalties:**

(1) No order imposing any of the penalties specified in clauses (v) to (ix) of rule 11 shall be made except after an inquiry held, as far as may be in the manner provided in this rule and 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against a Government 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.

Explanation- Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the disciplinary authority shall draw up or cause to be drawn up-

- (i) the substance of the imputations of misconduct or misbehavior into definite and distinct articles of charge;
- (ii) a statement of the imputations of misconduct or misbehavior 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;
  - (b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehavior and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary so to do, appoint, under sub-rule (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted, by the Government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in rule 15.

(b) If no written statement of defence is submitted by the Government servant, the disciplinary authority may itself inquire into the articles of charge or may, if it considers it necessary so to do, appoint, under sub-rule (2) an inquiring authority for the purpose.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority-

- (i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehavior;
- (ii) a copy of the written statement of defence, if any, submitted by the Government servant;
- (iii) a copy of the statements of witnesses, if any, referred to in sub-rule (3);
- (iv) evidence proving the delivery of the documents referred to in sub-rule (3) to the Government servant; and
- (v) a copy of the order appointing the "Presenting Officer".

(7) The Government servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by him of the articles of charge and the statement of the imputations of misconduct or misbehavior, as the inquiring authority may, by a notice in writing, specify in this behalf, or within such further time, not exceeding ten days, as the inquiring may allow.

(8) The Government servant may take the assistance of any other Government servant to present the case on his behalf, but may not engage a legal practitioner for the purposes unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits.

(9) If the Government servant who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him

whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the Government servant thereon.

(10) The inquiring authority shall return or finding of guilt in respect of those articles of charge to which the Government servant pleads guilty.

(11) The inquiring authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence-

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;

Note:- If the Government servant applies orally or in writing for the supply of copies of the statement of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

(iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in sub-rule (3).

Note:- The Government servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

(12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the document by such date as may be specified in such requisition:

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition referred to in sub-rule (12), every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production to all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the Government servant and withdraw the requisition made by it for the production or discovery of such documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the

Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests of justice.

Note:- New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

**(16)** When the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

**(17)** The evidence on behalf of the Government servant shall than be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

**(18)** The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

**(19)** The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed, and the Government servant, or permit them to file written briefs of their respective case, if they so desire.

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

**(21)** (a) Where a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (iv) or rule 11, [but not competent to impose any of the penalties specified in clauses (v) to (ix) of rule 11 has itself inquired into or caused to be inquired into the articles of any charge and that authority having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (v) to (ix) of rule 11 should be imposed on the Government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witness and examine, cross-examine and re-examine the witness and may impose on the Government servant such penalty as it may deem fit in accordance with these rules.

**(22)** Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

**(23)** (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain-

(a) the articles of charge and the statement of the imputations of misconduct or misbehavior;

- (b) the defence of the Government servant in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the findings on each article of charge and the reasons therefor.

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

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

(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include

- (a) the report prepared by it under clause (i):
- (b) the written statement of defence, if any, submitted by the Government servant;
- (c) the oral and documentary evidence produced in the course of the inquiry;
- (d) written briefs, if any, filed by the Presenting Officer or the Government servant or both during the course of the inquiry; and
- (e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

#### **15. Action on the inquiry report:**

(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall there upon proceed to hold the further inquiry according to the provisions of rule 14 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 11 should be imposed on the Government servant, it shall, notwithstanding anything in rule 16, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

(4) (i) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (v) to (ix) of rule 11 should be imposed on the Government servant, it shall-

- (a) furnish to the Government servant a copy of the report of the inquiry held by it and its findings on each article of charge, or, where the inquiry has been held by an inquiring authority, appointed by it, a copy of the report of such authority and a statement of its findings on each article of charge together with brief reasons for its disagreement, if any, with the findings of the inquiring authority;
- (b) give the Government servant a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of receipt of the notice or such further time not exceeding fifteen days, as may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the inquiry held under rule 14.

(ii) (a) In every case in which it is necessary to consult the Commission, the record of the inquiry together with a copy of the notice given under clause (i) and the representation made in pursuance of such notice, if any, shall be forwarded by the disciplinary authority to the Commission for its advice.

(b) The disciplinary authority shall after considering the representation, if any, made by the Government servant, and the advice given by the Commission, determine what penalty, if any, should be imposed on the Government servant and make such order as it may deem fit.

(iii) Where it is not necessary to consult the Commission the disciplinary authority shall consider the representation, if any, made by the Government servant in pursuance of the notice given to him under clause (i) and determine what penalty, if any, should be imposed on him and make such order as it may deem fit.

#### **16. Procedure for imposing minor penalties:**

(1) Subject to the provisions of sub-rule (3) of rule 15, no order imposing on a Government servant any of the penalties specified in clauses (i) to (iv) of rule 11 shall be made except after

- (a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehavior on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;
- (b) holding an inquiry in the manner laid down in sub-rules (3) to (23) or rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;
- (c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;
- (d) recording a finding on each imputation of misconduct or misbehavior; and
- (e) consulting the Commission where such consultation is necessary.

**(1-A)** Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed, after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold, increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of rule 14, before making any order imposing on the Government servant any such penalty.

(2) The record of the proceedings in such cases shall include-

- (i) a copy of the intimation to the Government servant of the proposal to take action against him;
- (ii) a copy of the statement of imputations of misconduct or misbehavior delivered to him;
- (iii) his representation, if any;
- (iv) the evidence produced during the inquiry;
- (v) the advice of the Commission, if any;
- (vi) the findings on each imputation of misconduct or misbehavior; and
- (vii) the orders on the case together with the reasons therefore.

#### **17. Communication of orders:**

Orders made by the disciplinary authority shall be communicated to the Government servant who shall also be supplied with a copy of the report of the inquiry, if any, held by the disciplinary authority and a copy of its findings on each article of charge, or, where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority and a statement of the findings of the disciplinary authority together with brief reasons for its disagreement, if any, with the findings of the inquiring authority (unless they have already been supplied to him) and also a copy of the advice, if any, given by the Commission and, where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reason for such non-acceptance.

**18. Common proceedings:**

(1) Where two or more Government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

Note- If the authorities competent to impose the penalty of dismissal on such Government servants 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.

- (2) Subject to the provisions of sub-rule (4) of rule 12, any such order shall specify-
- (i) the authority which may function as the disciplinary authority for the purpose of such common proceeding;
  - (ii) the penalties specified in rule 11 which such disciplinary authority shall be competent to impose;
  - (iii) whether the procedure laid down in rule 14 and rule 15 or rule 16 shall be followed in the proceeding.

**19. Special procedure in certain cases:**

Notwithstanding anything contained in rule 14 to rule 18-

- (i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or
- (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or
- (iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.

**20. Provisions regarding officers lent to State Governments etc:**

(1) Where the services of a Government servant are lent by one department to another department or to a State Government or an authority subordinate thereto or to a local or other authority (hereinafter in this rule referred to as "the borrowing authority"), the borrowing authority shall have the powers of the appointing authority for the purpose of placing such Government servant under suspension and of the disciplinary authority for the purpose of conducting a disciplinary proceeding against him:

Provided that the borrowing authority shall forthwith inform the authority which lent the services of the Government servant (hereinafter in this rule referred to as "the lending authority") of the circumstances leading to the order of suspension of such Government servant or the commencement of the disciplinary proceeding, as the case may be.

- (2) In the light of the findings in the disciplinary proceeding conducted against the Government servant-
- (i) if the borrowing authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 11 should be imposed on the Government servant, it may, after consultation with the lending authority, make such orders on the case as it deems necessary:

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government servant shall be replaced at the disposal of the lending authority;

- (ii) if the borrowing authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of rule 11 should be imposed on the Government servant, it shall replace his services at the disposal of the lending authority and transmit to it the proceedings of the inquiry and there upon the lending authority may, if it is the disciplinary authority, pass such orders thereon as it may deem necessary, or, if it is not the disciplinary authority, submit the case to the disciplinary authority, which shall pass such orders on the case as it may deem necessary:

Provided that before passing any such order the disciplinary authority shall comply with the provisions of sub-rules (3) and (4) of rule 15.

Explanation- The disciplinary authority may make an order under this clause on the record of the inquiry transmitted to it by the borrowing authority, or after holding such further inquiry as it may deem necessary, as far as may be, in accordance with rule 14.

#### **21. Provisions regarding officers borrowed from State Government etc.:**

(1) Where an order of suspension is made or a disciplinary proceeding is conducted against a Government servant whose services have been borrowed by one department from another department or from a State Government or an authority subordinate thereto or a local or other authority, the authority lending his services (hereinafter in this rule referred to as "the lending authority") shall forthwith be informed of the circumstances leading to the order of the suspension of the Government servant or of the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding conducted against the Government servant if the disciplinary authority is of the opinion that any of the penalties specified in clauses (i) to (iv) or rule 11 should be imposed on him, it may, subject to the provisions of sub-rule (3) of rule 15 and except in regard to a Government servant serving in the Intelligence Bureau upto the rank of Assistant Central Intelligence Officer, after consultation with the leading authority, pass such orders on the case as it may deem necessary:

- (i) provided that in the event of a difference of opinion between the borrowing authority and the lending authority the services of the Government servant shall be replaced at the disposal of the lending authority;
- (ii) if the disciplinary authority is of the opinion that any of the penalties specified in clauses (v) to (ix) or rule 11 should be imposed on the Government servant, it shall replace the services of such Government servant at the disposal of the lending authority and transmit to it the proceedings of the inquiry for such action as it may deem necessary.

### **PART VII – APPEALS**

#### **22. Orders against which no appeal lies:**

Notwithstanding anything contained in this part, no appeal shall lie against-

- (i) any order made by the President;
- (ii) any order of an interlocutory nature or of the nature of a step-in-aid or the final disposal of a disciplinary proceeding, other than an order of suspension;
- (iii) any order passed by an inquiring authority in the course of an inquiry under rule 14.

#### **23. Orders against which appeal lies:**

Subject to the provisions of rule 22, a Government servant may prefer an appeal against all or any of the following orders, namely:-

- (i) an order of suspension made or deemed to have been made under rule 10;
- (ii) an order imposing any of the penalties specified in rule 11 whether made by the disciplinary authority or by any appellate or reviewing authority;
- (iii) an order enhancing any penalty, imposed under rule 11;
- (iv) an order which-
  - (a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or by agreement; or
  - (b) interprets to his disadvantage the provisions of any such rule or agreement;

- (v) an order-
  - (a) stopping him at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;
  - (b) reverting him while officiating in a higher service, grade or post, to a lower service, grade or post, otherwise than as a penalty;
  - (c) reducing or withholding the pension or denying the maximum pension admissible to him under the rules;
  - (d) determining the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof;
  - (e) determining his pay and allowance-
    - (i) for the period of suspension, or
    - (ii) For the period from the date of his dismissal, removal or compulsory retirement from service, or from the date of his reduction to a lower service, grade, post, time-scale or stage in a time-scale of pay, to the date of his re-instatement or restoration to his service, grade or post, or
  - (f) determining whether or not the period from the date of his suspension or from the date of his dismissal, removal, compulsory retirement or reduction to a lower service, grade, post, time-scale of pay or stage in a time-scale of pay to the date of his reinstatement or restoration to his service, grade or post shall be treated as a period spent on duty for any purpose.

Explanation – In this rule-

- (i) the expression ‘Government servant’ includes a person who has ceased to be in Government service;
- (ii) the expression ‘pension’ includes additional pension, gratuity and any other retirement benefit.

#### **24. Appellate Authorities:**

(1) A Government servant, including a person who has ceased to be in Government service, may prefer an appeal against all or any of the orders specified in rule 23 to the authority specified in the behalf either in the Schedule or by a general or special order of the President or, where no such authority is specified-

- (i) where such Government servant is or was a member of a Central Civil Service, class I or Class II or holder of a Central Civil Post, Class I or Class II,-
  - (a) to the appointing authority, where the order appealed against is made by an authority subordinate to it, or
  - (b) to the President, where such order is made by any other authority;
- (ii) where such Government servant is or was a member of a Central Civil Service, class III or class IV or holder of a Central Civil Post, class III or class IV, to the authority to which the authority making the order against is immediately subordinate.

(2) Notwithstanding anything contained in sub-rule (1),-

- (i) an appeal against an order in a common proceeding held under rule 18 shall lie to the authority to which the authority functioning as the disciplinary authority for the purpose of that proceeding is immediately subordinate;
- (ii) where the person who made the order appealed against becomes, by virtue of his subsequent appointment or otherwise, the appellate authority in respect of such order, an appeal against such order shall lie to the authority to which such person is immediately subordinate.

(3) A Government servant may prefer an appeal against an order imposing any of the penalties specified in rule 11 to the President, where no such appeal lies to him under sub-rule (1) or sub-rule (2), if such penalty is imposed, by any authority other than the President, on such Government servant in respect of his activities connected with his work as an office-bearer of an association, federation, or union participating in the Joint Consultation and Compulsory Arbitration Scheme.

**25. Period of limitation for appeals:**

No appeal preferred under this Part shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copy of the order appealed against is delivered to the appellant:

Provided that the appellate authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

**26. Form and contents of appeal:**

(1) Every person preferring an appeal shall do so separately and in his own name.

(2) The appeal shall be presented to the authority to whom the appeal lies, a copy being forwarded by the appellant to the authority which made the order appealed against. It shall contain all material statements and arguments on which the appellant relies, shall not contain any disrespectful or improper language, and shall be complete in itself.

(3) The authority which made the order appealed against shall on receipt of a copy of the appeal, forward the same with its comments thereon together with the relevant records to the appellate authority without any avoidable delay, and without waiting for any direction from the appellate authority.

**27. Consideration of appeal:**

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of rule 10 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in rule 11 or enhancing any penalty imposed under the said rule, the appellate authority shall consider-

(a) where the procedure laid down in these rule has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe :

And pass orders –

(i) Confirming, enhancing, reducing or setting aside the penalty; or

(ii) Remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstance of the case :

Provided that –

(i) The Commission shall be consulted in all cases where such consultation is necessary;

(ii) If the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 11 and an inquiry under rule 14 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of rule 14 and thereafter, on a consideration of the proceedings of such inquiry and after giving the appellant a reasonable opportunity, as far as may be in accordance with the provisions of rule 14 and thereafter, on a consideration of the proceedings of such inquiry and after giving the appellant a reasonable opportunity, as far as may be in accordance with the provisions of sub-rule (4) of rule 15, of making a representation against the penalty proposed on the basis of the evidence adduced during such inquiry, make such orders as it may deem fit;

(iii) If the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 11 and an inquiry under rule 14 has already been held in the case, the appellate authority shall, after giving the appellant a reasonable opportunity, as far as may be in accordance with the provisions of sub-section (4) of rule 15, of making a representation against the penalty proposed on the basis of the evidence adduced during the inquiry, make such orders as it may deem fit; and'

(iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of rule 16, of making a representation against such enhanced penalty.

(3) In an appeal against any other order specified in rule 23 the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.

**28. Implementation of orders in appeal:**

The authority which made the order appealed against shall give effect to the orders passed by the appellate authority.

**PART VIII – REVIEW**

**29. (1)** Notwithstanding anything contained in these rules,-

- (i) the President, or
- (ii) the Comptroller and Auditor-General, in the case of a Government servant serving in the Indian Audit and Accounts Department, or
- (iii) the posts and Telegraphs Board, in the case of a Government servant serving in or under the Posts and Telegraphs Board, or
- (iv) the head of a department directly under the Central Government, in the case of a Government servant serving in a department or office, (not being the Secretariat or the Posts and Telegraphs Board), under the control of such head of a department; or
- (v) the appellate authority, within six months of the date of the order proposed to be reviewed, or
- (vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order; may at any time, either on his or its own motion or otherwise call for the records of any inquiry and review any order made under these rules or under the rules repealed by rule 34 from which an appeal is allowed but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may-
  - (a) confirm, modify or set aside the order; or
  - (b) confirm, reduce, enhance or set aside the penalty imposed by the order or impose any penalty where no penalty has been imposed; or
  - (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
  - (d) pass such other orders as it may deem;

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of rule 11 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in rule 14 and after giving a reasonable opportunity to the Government servant concerned of showing cause against the penalty proposed on the evidence adduced during the inquiry and except after consultation with the Commission where such consultation is necessary:

Provided further that no power of review shall be exercised by the Comptroller and Auditor-General, the Posts and Telegraphs Board or the head of department, as the case may be, unless-

- (i) the authority to which made the order in appeal; or
- (ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

(2) No proceeding for review shall be commenced until after,-

- (i) the expiry of the period of limitation for an appeal, or
- (ii) the disposal of the appeal, where any such appeal has been preferred.

(3) An application for review shall be dealt with in the same manner as if it were an appeal under these rules.

**30. Service of Orders, Notice etc.**

Every order, notice and other process made or issued under these rules shall be served in person on the Government servant concerned or communicated to him by registered post.

**31. Power to relax time limit and to condone delay:**

Save as otherwise expressly provided in these rules, the authority competent under these rules to make any order may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in these rules for anything required to be done under these rules or condone any delay.

**32. Supply of copy of Commission advice:**

Whenever the commission is consulted as provided in these rules, a copy of the advice by the Commission and, where such advice has not been accepted, also a brief statement of the reasons for such non-acceptance, shall be furnished to the Government servant concerned along with a copy of the order passed in the case, by the authority making the order.

**33. Transitory provisions:**

On and from the commencement of these rules and until the publication of the Schedules under these rules, the Schedules to the Central Civil Services (Classification, Control and Appeal) Rules, 1957, and the Civilians in Defence Services (Classification, Control and Appeal) Rules, 1952, as amended from time to time, shall be deemed to be the Schedules relating to the respective categories of Government servants to whom they are, immediately before the commencement of these rules, applicable, and such Schedules shall be deemed to be the Schedules referred to in the corresponding rules of these rules.

**34. Repeal and savings:**

(1) Subject to the provisions of rule 33, the Central Civil Services (Classification, Control and Appeal) Rules, 1957 and the Civilians in Defence Services (Classification, Control and Appeal) Rules, 1952, and any notifications or orders issued there under in so far as they are inconsistent with these rules, are hereby repealed:

Provided that-

(a) such appeal shall not affect the previous operation of the said rules, or any notification or order made, or anything done, or any action taken, there under;

(b) any proceedings under the said rules, pending at the commencement of these rules shall be continued and disposed of as far as may be, in accordance with the provisions of these rules, as if such proceedings were proceedings under these rules.

(2) Nothing in these rules shall be construed as depriving any person to whom these rule apply, of any right of appeal which had accrued to him under the rules, notification or orders in force before the commencement of these rules.

(3) An appeal pending at the commencement of these rules against an order made before such commencement shall be considered and orders thereon shall be made, in accordance with these rules, as if such order were made and the appeal were preferred under these rules.

(4) As from the commencement of these rules any appeal or application for review against any orders made before such commencement shall be preferred or made under these rules, as if such orders were made under these rules:

Provided that nothing in these rules shall be construed as reducing any period of limitation for any appeal or review provided by any rule in force before the commencement of these rules.

**35. Removal of doubts:**

If any doubt arises as to the interpretation of any of the provisions of these rules, the matter shall be referred to the President or such other authority as may be specified by the President by a general or special order, and the President or such other authority shall decide the same.

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## THE CENTRAL CIVIL SERVICES (CONDUCT) RULES, 1964

### 1. Short title, commencement and application:

- (1) These rules may be called the Central Civil Services (Conduct) Rules, 1964.
- (2) They shall come into force at once.

(3) Save as otherwise provided in these rules and subject to the provisions of the Indian Foreign Service (Conduct and Discipline) Rules, 1961, these rules shall apply to every person appointed to a civil service or post (including a civilian in Defence Service) in connection with the affairs of the Union:

Provided that nothing in these rules shall apply to any Government servant who is-

- (a) (i) a railway servant as defined in section 3 of the Indian Railways Act, 1890 (9 of 1890);
- (ii) a person holding a post in the Railway Board and is subject to the Railway Services (Conduct) Rules;
- (iii) holding any post under the administrative control of the Railway Board or of the Financial Commissioner of Railways;
- (b) a member of an All-India Service;
- (c) a holder of any post in respect of which the President has, by a general or special order, directed that these rules shall not apply:

Provided further that rules 4,6,7,12,14, sub-rule (3) of rule 15, rule 16, sub-rules (1), (2) and (3) of rule 18, rules 19, 20 and 21 shall not apply to any Government servant who draws a pay which does not exceed Rs. 500.00 per mensem and holds a non-gazetted post in any of the following establishments, owned or managed by the Government, namely:-

- (i) ports, docks, wharves or jetties;
- (ii) defence installations except training establishment;
- (iii) public works establishments, in so far as they relate to work charged staff;
- (iv) irrigation and electric power establishments;
- (v) mines as defined in clause (j) of section 2 of the Mines Act, 1952 (35 of 1952);
- (vi) factories as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948); and
- (vii) field units of the Central Tractor Organisation employing workmen governed by labour laws:

Provided further that these rules shall apply to any person temporarily transferred to a service or post specified in clause (a) of the first proviso to whom but for such transfer these rules would have otherwise applied.

Explanation- For the purposes of the second proviso, the expression 'establishment', shall not include any railway establishment or any office mainly concerned with administrative, managerial, supervisory, security or welfare functions.

### 2. Definitions:

In these rules, unless the context otherwise requires,-

- (a) "the Government" means the Central Government;
- (b) "Government servant" means any person appointed by Government to any civil service or post in connection with the affairs of the Union and includes a civilian in a defence service;

Explanation,- A Government servant whose services are placed at the disposal of a company, corporation, organization or a local authority by the Government shall, for the purposes of these rules, be deemed to be a Government servant serving under the Government notwithstanding that his salary is drawn from sources other than the Consolidated Fund of India;

- (c) "members of family" in relation to Government servant includes-

- (i) The wife or husband, as the case may be, of the Government servant, whether residing with the Government servant or not but does not include a wife or husband, as the case may be, separated from the Government servant by a decree or order of a competent court;
- (ii) son or daughter or step-son or step-daughter of the Government servant and wholly dependent servant or not but does not include a wife or husband, as the case may be, separated from the Government servant by a decree or order of a competent court;
- (iii) any other person related, whether by blood or marriage to the Government servant or to the Government servant's wife or husband, and wholly dependent on the Government servant.

### **3. General:**

- (1) Every Government servant shall at all times-
  - (i) maintain absolute integrity;
  - (ii) maintain devotion to duty; and
  - (iii) do nothing which is unbecoming of a Government servant.

(2) (i) Every Government servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government servants for the time being under his control and authority.

(ii) No Government servant shall, in the performance of his official duties or in the exercise or powers conferred on him, act otherwise than in this best judgment except when he is acting under the direction of his official superior and shall, where he is acting under such direction, obtain the direction in writing, wherever practicable, and where it is not practicable to obtain the direction in writing, he shall obtain written confirmation of the direction as soon thereafter as possible.

Explanation,- Nothing in clause (ii) of sub-rule (2) shall be construed as empowering a Government servant to evade his responsibilities by seeking instructions from, or approval of a superior officer or authority when such instructions are not necessary under the scheme of distribution of powers and responsibilities.

### **4. Employment of near relatives of Government servants in private undertakings, enjoying Government patronage:**

- (1) No Government servant shall use his position or influence directly or indirectly to secure employment for any member of his family in any private undertaking.
- (2) (i) No class-1 officer shall, except with the previous sanction of the Government, permit his son, daughter or other dependant to accept employment in any private undertaking with which he has official dealings or in any other undertaking having official dealings with the Government:

Provided that where the acceptance of the employment cannot await prior permission of the Government or is otherwise considered urgent, the matter shall be reported to the Government; and the employment may be accepted provisionally subject to the permission of the Government.

(ii) A Government servant shall, as soon as he becomes aware of the acceptance by a member of his family of an employment in any private undertaking, intimate such acceptance to the prescribed authority and shall also intimate whether he has or has had any official dealings with that undertaking:

Provided that no such intimation shall be necessary in the case of a class-1 officer if he has already obtained the sanction of, or sent a report to the Government under clause (i).

(3) No Government servant shall in the discharge of his official duties deal with any matter or give or sanction any contract to any undertaking or any other person if any member of his family No Government servant shall in the discharge of his official duties deal with any matter or give or sanction any contract to any undertaking or any other person if any member of his family is employed in that undertaking or under that person or if he or any member of his family is interested in such matter or contract in any other manner and the Government servant shall refer every such matter or contract to his official superior and the matter or contract shall thereafter be disposed or according to the instruction of the authority to whom the reference is made.

#### **5. Taking part in politics and elections:**

(1) No Government servant shall be a member of, or be otherwise associated with any political party or any organization which takes part in politics nor shall he take part in, subscribe in aid of, or assist in any other manner, any political movement or activity.

(2) It shall be the duty of every Government servant to endeavour to prevent any member of his family from taking part in, subscribing in aid of or assisting in any other manner any movement or activity which is, or tends directly or indirectly to be, subversive or the Government as by law established and where a Government servant is unable to prevent a member of his family from taking part in, or subscribing in aid of or assisting in any other manner, any such movement or activity, he shall make a report to that effect to the Government.

(3) If any question arises whether a party is a political party or whether any organization takes part in politics or whether any movement or activity falls within the scope of sub-rule (2), the decision of the Government thereon shall be final.

(4) No Government servant, shall canvass or otherwise interfere with, or use his influence in connection with or take part in, an election to any legislature or local authority:

Provided that-

- (i) a Government servant qualified to vote at such election may exercise his right to vote, but where he does so, he shall give no indication of the manner in which he proposes to vote or has voted;
- (ii) a Government servant shall not be deemed to have contravened the provisions of this sub-rule by reason only that he assists in the conduct of an election in the due performance of a duty imposed on him by or under any law for the time being in force.

Explanation - The display by a Government servant on his person, vehicle or residence of any electoral symbol shall amount to using his influence in connection with an election within the meaning of his sub-rule.

#### **6. Joining of Association by Government servants :**

No Government servant shall join, or continue to be a member of, an association the objects or activities of which are prejudicial to the interests of the sovereignty and integrity of India or public order or morality.

#### **7. Demonstrations and strikes :**

No Government servant shall –

- (i) engage himself or participate in any demonstration which is prejudicial to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or which involved contempt of court, defamation or incitement to an offence, or
- (ii) resort to or in any way abet any form of strike in connection with any matter pertaining to his service or the service of any other Government servant.

#### **8. Connection with Press or Radio :**

(1) No Government servant shall, except with the previous sanction of the Government, own wholly or in part or conduct or participate in the editing or management of any news paper or other periodical publication.

(2) No Government servant shall, except with the previous sanction of the Government of the prescribed authority, or in the bona fide discharge of his duties, participate in a radio broadcast or contribute any article or write any letter either in his own name or anonymously, pseudonymously or in the name of any other person to any newspaper or periodical.

Provided that no such sanction shall be required if such broadcast or such contribution is of a purely literary, artistic or scientific character.

#### **9. Criticism of Government :**

No Government servant shall, in any radio broadcast or in any document published in his own name or anonymously, pseudonymously or in the name of any other person or in any communication to the press or in any public utterance, make any statement of fact or opinion –

- (i) Which has the effect of an adverse criticism of any current or recent policy or action of the Central Government or a State Government :

Provided that in the case of any Government servant included in any category of Government servants specified in the second proviso to sub-rule (3) of rule 1, nothing contained in his clause shall apply to bona fide expression of views by him as an office-bearer of a trade union of such Government servants for the purpose of safeguarding the conditions of service of such Government servants or for securing an improvement thereof; or

- (ii) which is capable of embarrassing the relations between the Central Government and the Government of any State: or
- (iii) which is capable of embarrassing the relations between the Central Government and the Government of any foreign State:

Provided that nothing in this rule shall apply to any statements made or views expressed by a Government servant in his official capacity or in the due performance of the duties assigned to him.

#### **10. Evidence before committee or any other authority:**

(1) Save as provided in sub-rule (3) no Government servant shall, except with the previous sanction of the Government, give evidence in connection with any enquiry conducted by any person, committee or authority.

(2) Where any sanction has been accorded under sub-rule (1), no Government servant giving such evidence shall criticize the policy or any action of the Central Government or of a State Government.

- (3) Nothing in this rule shall apply to-
  - (a) evidence given at an enquiry before an authority appointed by the Government, Parliament or a State Legislature; or
  - (b) evidence given in any judicial enquiry; or
  - (c) evidence given at any departmental enquiry ordered by authorities subordinate to the Government.

#### **11. Unauthorised communication of information:**

No Government servant shall, except in accordance with any general or special order of the Government or in the performance in good faith of the duties assigned to him, communicate directly or indirectly, any official document or any part thereof or information to any government servant or any other person to whom he is not authorized to communicate such document or information.

#### **12. Subscriptions:**

No Government servant shall, except with the previous sanction of the Government or of the prescribed authority, ask for or accept contributions to, or otherwise associate himself with the raising of, any funds or other collections in cash or in kind in pursuance of any object whatsoever.

**13. Gifts:**

(1) Save as otherwise provided in these rules, no Government servant shall accept, or permit any member of his family or any person acting on his behalf to accept, any gift.

Explanation,- The expression "gift" shall include free transport, boarding, lodging or other service or any other pecuniary advantage when provided by any person other than a near relative or personal friend having no official dealings with the Government servant.

Note (I)- A casual meal, lift or other social hospitality shall not be deemed to be a gift.

Note (II)- A Government servant shall avoid accepting lavish hospitality or frequent hospitality from any individual having official dealings with him or from industrial or commercial firms, organizations, etc.

(2) On occasion, such as weddings, anniversaries, funerals or religious functions, when the making of a gift is in conformity with the prevailing religious or social practice, a Government servant may accept gifts from his near relatives but he shall make a report to the Government if the value of any such gift exceeds-

- (i) Rs. 500.00, in the case of a Government servant holding any class I or class II post;
- (ii) Rs. 250.00, in the case of a Government servant holding any class III post; and
- (iii) Rs. 100.00, in the case of a Government servant holding any class IV post.

(3) On such occasions as are specified in sub-rule (2), Government servant may accept gift from his personal friends having no official dealing with him, but he shall make a report to the Government if the value of any such gift exceeds-

- (i) Rs. 200.00, in the case of a Government servant holding any class I or class II post;
- (ii) Rs. 100.00, in the case of a Government servant holding any class III post; and
- (iii) Rs. 50.00, in the case of a Government servant holding any class IV post.

(4) In any other case, a Government servant shall not accept any gift without the sanction of the Government if the value there of exceeds-

- (i) Rs. 75.00, in the case of a Government servant holding any class I or class II post; and
- (ii) Rs. 25.00, in the case of a Government servant holding any class III or class IV post.

**14. Public demonstrations in honour of Government servants:**

No Government servant shall, except with the previous sanction of the Government, receive any complimentary or valedictory address or accept any testimonial or attend any meeting or entertainment held in his honour, or in the honour of any other Government servant:

Provided that nothing in this rule shall apply to-

- (i) a farewell entertainment of a substantially private and informal character held in honour of a Government servant or any other Government servant on the occasion of his retirement or transfer or any person who has recently quit the service of any Government; or
- (ii) the acceptance of simple and inexpensive entertainments arranged by public bodies or institutions.

Note,- Exercise of pressure or influence of any sort on any Government servant to induce him to subscribe towards any farewell entertainment even if it is of a substantially private or informal character, and the collection of subscriptions from class III or class IV employees under any circumstances for the entertainment of any Government servant not belonging to class III or class IV is forbidden.

**15. Private trade or employment:**

(1) No Government servant shall, except with the previous sanction of the Government, engage directly or indirectly in any trade or business or undertake any other employment:

Provided that a Government servant may, without such sanction, undertake honorary work of a social or charitable nature or occasional work of a literary, artistic or scientific character, subject to the condition that his official duties do not thereby suffer; but he shall not undertake, or shall be deemed to be a breach of this sub-rule.

Explanation,- Canvassing by a Government servant in support of the business of insurance agency, commission agency, etc., owned or managed by his wife or any other member of his family shall be deemed to be a breach of this sub-rule.

(2) Every Government servant shall report to the Government if any member of his family is engaged in a trade or business or owns or manages an insurance agency or commission agency.

(3) No Government servant shall, without the previous sanction of the Government, expect in the discharge of his official duties, take part in the registration, promotion or management of any bank or other company which is required to be registered under the Companies Act, 1956 (1 to 1956) or any other law for the time being in force or any co-operative society for commercial purposes:

Provided that a Government servant may take part in the registration, promotion or management of a co-operative society substantially for the benefit of Government servants, registered under the Co-operative Societies Act, 1912 (2 of 1912) or any other law for the time being in force, or of a literary, scientific or charitable society registered under the Societies Registration Act, 1860 (21 of 1860), or any corresponding law in force.

(4) No Government servant may accept any fee for any work done by him for any public body or any private person without the sanction of the prescribed authority.

#### **16. Investment, lending and borrowing:**

(1) No Government servant shall speculate in any stock, share or other investment.

Explanation,- Frequent purchase or sale or both, of shares, securities or other investments shall be deemed to be speculation within the meaning of this sub-rule.

(2) No Government servant shall make, or permit any member of his family or any person acting on his behalf to make, any investment which is likely to embarrass or influence him in the discharge of his official duties.

(3) If any question arises whether any transaction is of the nature referred to in sub-rule (1) or sub-rule (2), the decision of the Government thereon shall be final.

(4)(i) No Government servant shall, save in the ordinary course of business with a bank or a firm of standing duly authorized to conduct banking business, either himself or through any member of his family or any other person acting on his behalf,-

(a) lend or borrow money, as principal or agent, to or from any person within the local limits of his authority or with whom he is likely to have official dealings, or otherwise place

himself under any pecuniary obligation to such person, or

(b) lend money to any person at interest or in a manner whereby return in money or in kind is charged or paid:

Provided that a Government servant may, give to or accept from, a relative or a personal friend, a purely temporary loan of a small amount free of interest, or operate a credit account with a bona fide tradesman or make an advance of pay to his private employee.

(ii) When a Government servant is appointed or transferred to a post of such nature as would involve him in the breach of any of the provisions of sub-rule (2) or sub-rule (4), he shall forthwith report the circumstances to the prescribed authority and shall thereafter act in accordance with such order as may be made by such authority.

**17. Insolvency and habitual indebtedness:**

A Government servant shall so manage his private affairs as to avoid habitual indebtedness or insolvency. A Government servant against whom any legal proceeding is instituted for the recovery of any debt due from him or for adjudging him as an insolvent shall forthwith report the full facts of the legal proceeding to the Government.

Note,- The burden of proving that the insolvency or indebtedness was the result of circumstances which, with the exercise of ordinary diligence, the Government servant could not have foreseen, or over which he had no control, and had not proceeded from extravagant or dissipated habits, shall be upon the Government servant.

**18. Movable, immovable and valuable property:**

(I) Every Government servant shall, on his first appointment to any service or post and thereafter at such intervals as may be specified by the Government, submit a return of his assets and liabilities, in such form as may be prescribed by the Government, giving the full particulars regarding:

- (a) the immovable property inherited by him, or owned or acquired by him or held by him on lease or mortgage, either in his own name or in the name of any member of his family or in the name of any other person:
- (b) shares, debentures and cash including bank deposits inherited by him or similarly owned, acquired, or held by him;
- (c) other movable property inherited by him or similarly owned, acquired or held by him; and
- (d) debts and other liabilities incurred by him directly or indirectly.

Note I,- Sub-rule (1) shall not ordinarily apply to class IV servants but the Government may direct that it shall apply to any such Government servant or class of such Government servants.

Note II,- In all return, the values of items of movable property worth less than Rs. 1,000.00 may be added and shown as lump sum. The value of articles of daily use such as clothes, utensils, crockery, books etc., need not be included in such return.

Note III,- Every Government servant who is in service on the date of the commencement of these rules shall submit a return under this sub-rule on or before such date as may be specified by the Government after such commencement.

(2) No Government servant shall, except with the previous knowledge of the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any member of his family:

Provided that the previous sanction of the prescribed authority shall be obtained by the Government servant if any such transaction is-

- (i) with a person having official dealing with the Government servant; or
- (ii) otherwise than through a regular or reputed dealer.

(3) Every Government servant shall report to the prescribed authority every transaction concerning movable property owned or held by him either in his own name or in the name of a member of his family, if the value of such property exceeds Rs. 1,000.00 in the case of a Government servant holding any class I or class II post or Rs. 500.00 in the case of a Government servant holding any class III or class IV post:

Provided that the previous sanction of the prescribed authority shall be obtained if any such transaction is-

- (i) with a person having official dealings with the Government servant; or
- (ii) otherwise than through a regular or reputed dealer.

(4) The Government or the prescribed authority may, at any time, by general or special order, require a Government servant to furnish, within a period specified in the order, a full and completed statement of such movable or immovable property held or acquired by him or on his behalf or by any member of his family as may be specified in the order. Such

statement shall, if so required by the Government or by the prescribed authority, include the details of the means by which, or the source from which, such property was acquired.

(5) The Government may exempt any category of Government servants belonging to class III or class IV from any of the provisions of this rule except sub-rule (4). NO such exemption shall, however, be made without the concurrence of the Ministry of Home Affairs.

Explanation,- (1) For the purposes of this rule the expression “movable property” includes-

- (a) jewellery, insurance policies the annual premia of which exceeds Rs. 1,000.00 or one sixth of the total annual emoluments received from Government whichever is less, shares, securities and debentures;
- (b) loans advanced by such Government servants whether secured or not;
- (c) motor cars, motor cycles, horses, or any other means of conveyance; and
- (d) refrigerators, radios and radiograms.

(2) “Prescribed authority” means,-

- (a) (i) the Government, in the case of a Government servant holding any class I post, except where any lower authority is specially specified by the Government for any purpose;
- (ii) Head of Department, in the case of a Government servant holding any class II post;
- (iii) Head of Office, in the case of a Government servant holding any class III or class IV post;
- (b) in respect of a Government servant on foreign service or on deputation to any other Ministry or any other Government, the parent department on the cadre of which such Government servant in borne or the Ministry to which he is administratively subordinate as member of that cadre.

#### **19. Vindication of acts and character of Government servants:**

No Government servant shall, except with the previous sanction of the Government, have recourse to any court or to the press for the vindication of any official act which has been the subject matter of adverse criticism or an attack of a defamatory character.

(2) Nothing in this rule shall be deemed to prohibit a Government servant from vindicating his private character or any act done by him in his private capacity and where any action for vindicating his private character or any act done by him in private capacity is taken “,” the Government servant shall submit a report to the prescribed authority regarding such action.

#### **20. Canvassing of non-official or other influence:**

No Government servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government.

#### **21. Bigamous marriages:**

(1) No Government servant who has a wife living shall contract another marriage without first obtaining the permission of the Government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him.

(2) No female Government servant shall marry any person who has a wife living without first obtaining the permission of the Government.

#### **22. Consumption of intoxicating drinks and drugs:**

A Government servant shall-

- (a) strictly abide by any law relating to intoxicating drinks or drugs in force in any area in which he may happen to be for the time being;
- (b) take due care that the performance of his duties is not affected in any way by the influence of any intoxicating drink or drug;
- (c) not appear in a public place in a state intoxication;
- (d) not habitually use any intoxicating drink or drug to excess.

**23. Interpretation:**

If any question arises relating to the interpretation of these rules, it shall be referred to the Government whose decision thereon shall be final.

**24. Delegation of powers:**

The Government may, by general or special order, direct that any power exercisable by it or any Head of Department under these rules (except the powers under rule 23 and these rules) shall, subject to such conditions, if any, as may be specified in the order, be exercisable also by such officer or authority as may be specified in the order.

**25. Repeal and savings:**

Any rules corresponding to these rules in force immediately before the commencement of these rules and applicable to the Government servants to whom these rules apply are hereby repealed:

Provided that any order made or action taken under the rules so repealed shall be deemed to have been made or taken under the corresponding provisions of these rules.

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**CENTRAL CIVIL SERVICES (TEMPORARY SERVICES) RULES, 1965**

**1. Short title, commencement and application:**

(1) These rules may be called the Central Civil Services (Temporary Service) Rules, 1965.

(2) They shall come into force at once.

(3) Subject to the provisions of sub-rule (4), these rules shall apply to all persons who hold a civil post under the Government of India and who are under the rule-making control of the President, but who do not hold a lien or a suspended lien on any post under the Government of India or any State Government.

(4) Nothing in these rules shall apply to-

- (a) railway servants;
- (b) personnel paid from Defence Service Estimates;
- (c) Government servants not in whole-time employment;
- (d) Government servants paid out of contingencies;
- (e) Government servants paid out of contingencies;
- (f) persons employed in extra-temporary establishments or in work-charged establishments:-
- (g) non-departmental telegraphic and telegraph men employed in the Posts and Telegraph Department;
- (h) such other categories of employees as may be specified by the Central Government by notification published in the Official Gazette.

**2. Definition:**

In these rules unless the context otherwise requires,-

- (a) "appointing authority" means, in relation to a specified post, the authority declared as such under the Central Civil Services (Classification, Control and Appeal) Rules, 1957;
- (b) "quasi-permanent service" means temporary service commencing from the date on which a declaration made under rule 3 takes effect and consists of period of duty and leave (other than extraordinary leave) after that date;
- (c) "specified post" means the particular post, or the particular grade of posts within cadre, in respect of which a Government servant is declared to be quasi-permanent under rule 3;
- (d) "temporary service" means the service of a temporary Government servant in a temporary post, under the Government of India.

**3. When a Government servant shall be deemed to be quasi-permanent:**

A Government servant shall be deemed to be in quasi-permanent service-

- (i) if he has been in continuous temporary service more than three years; and
- (ii) if the appointing authority, being satisfied, having regard to the quality of his work, conduct and character, as to his suitability for employment in a quasi-permanent capacity under the Government of India, has made a declaration to that effect.

**4. Declaration under rule 3 to specify the post:**

A declaration made under rule 3 shall specify the particular post or the particular grade of posts within a cadre in respect of which it is made, and the date from which it shall take effect.

5. (i) (a) The services of a temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority, or by the appointing authority to the Government servant.

(b) The period of such notice shall be one month:

Provided that the services of any such Government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his service, or, as the case may be, for the period by which such notice falls short of one month.

(2) (a) Where a notice is given by the appointing authority terminating the services of a temporary Government servant or where the services of any such Government servant is terminated either on the expiry of the period of such notice or forthwith by payment of pay plus allowances, the Central Government or any other authority specified by the Central Government in this behalf may, of its own motion or otherwise re-open the case, and after calling for the records of the cause and after making such inquiry as it deems fit-

- (i) confirm the action taken by the appointing authority;
- (ii) withdraw the notice;
- (iii) re-instate the Government servant in service; or
- (iv) make such other order in the case as it may consider proper;

Provided that except in special circumstances, which should be recorded in writing, no case shall be re-opened under this sub-rule after the expiry of three months-

- (i) from the date of notice, in a case where notice is given;
- (ii) from the date of termination of service, in case where no notice is given.

(b) Where a Government servant is re-instated in service under sub-rule (2) the order of re-instatement shall specify-

- (i) the amount or proportion of pay and allowances, if any, to be paid to the Government servant for the period of his absence between the date of termination of his services and the date of his re-instatement; and
- (ii) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes.

#### **6. Termination of temporary service on account of physical unfitness:**

Notwithstanding anything contained in rule 5, the services of a temporary Government servant who is not in quasi-permanent service may be terminated at any time without notice on his being declared physically unfit for continuance in service by an authority who would have been competent to declare him as permanently incapacitated for service had his appointment been permanent.

#### **7. Termination of quasi-permanent service:**

- (1) The services of a Government servant in quasi-permanent service, shall be liable to termination-
  - (i) in the same circumstances and in the same manner as a Government servant in permanent service, or
  - (ii) when the appointing authority concerned has certified that a reduction has occurred in the number of posts available for Government servants not in permanent service:

Provided that the services of a Government servant in quasi-permanent service shall not be liable to termination under clause (ii) so long as any post of the same grade and under the same appointing authority as the specified post held by the Government servant in quasi-permanent service continues to be held by a Government servant not in permanent or quasi-permanent service:

Provided further that as among Government servants in quasi-permanent service whose specified posts are of the same grade and under the same appointing authority, termination of service consequent on reduction of posts, shall ordinarily take place in order of juniority in the list referred to in rule 8:

Provided further that when the services of a quasi-permanent Government servant are terminated under clause (ii) he shall be given three months' notice and if, in any case, such notice is not given then with the sanction of the authority

competent to terminate the services of such Government servant, a sum equivalent to his pay plus allowances for the period of the notice, or, as the case may be, for the period by which the notice actually given to him falls short of three months, shall be paid to him at the same rates at which he was drawing them immediately before the termination of his services, and, if he is entitled to any gratuity, such gratuity shall not be paid for the period in respect of which he receives a sum in lieu of notice.

(2) Nothing in this rule shall affect any special instruction issued by Government regarding the manner and the order in which temporary Government servants belonging to any Scheduled Caste or Scheduled Tribe may be discharged.

**8. Permanent appointment of Government servant in quasi-permanent service:**

(1) Subject to the provisions of this rule a Government servant in respect of whom the declaration has been made under rule 3, shall be eligible for a permanent appointment on the occurrence of a vacancy in the specified post which may be reserved for being filled from among Government servants in quasi-permanent service, in accordance with such instructions as may be issued by the President in this behalf from time to time.

Explanation,- No such declaration shall confer upon any Government servant in quasi-permanent service a right to claim a permanent appointment to any post.

(2) Every appointing authority shall, after consultation with the appropriate Departmental Promotion Committee, prepare from time to time a list, in order of precedence, of Government servants in quasi-permanent service, who are eligible for permanent appointment and in preparing such list, the appointing authority shall consider both the seniority and the merit of the Government servants concerned.

(3) All permanent appointments to posts which are reserved under sub-rule (1) under the control of any appointing authority shall be made in accordance with such list:

Provided that the Government may order that permanent appointment to any grade or post may be made purely in order of seniority.

**9. Leave allowance etc. of a Government servant in quasi-permanent service:**

A Government servant in quasi-permanent service and holding a specified post shall as from the date on which his services are declared to be quasi-permanent, be entitled to the same conditions of service in respect of leave, allowances and disciplinary matters as a Government servant in permanent service holding the specified post is entitled to.

**10. Terminal gratuity payable to temporary Government servants:**

(1) A temporary Government servant who retires on superannuation or is discharged from service or is declared invalid for further service shall be eligible for a gratuity at the rate of one-third of a month's pay for each completed year of his service; provided that he had completed not less than five years' continuous service at the time of retirement, discharge or invalidment.

Death Gratuity:

(2) In the event of the death of a temporary Government servant while in service, his family shall be eligible for a death gratuity on the scale and subject to the conditions specified below:-

- (a) if the death takes place after completion of one year's service but before completion of three year's service,-a gratuity equal to one month's pay;
- (b) if the death takes place after completion of three year's service but before completion of five year's service,-a gratuity equal to two month's pay;
- (c) if the death takes place after completion of five year's service or more,- a gratuity equal to three months' pay or the amount of terminal gratuity as calculated under sub-rule (1), whichever is more:

Provided that the grant of gratuity under this rule shall be subject to the service rendered by the Government servant concerned being held by the authority competent to appoint him to be satisfactory:

Provided further that no gratuity shall be admissible in a case where the Government servant concerned resigns its post or is removed or dismissed from service as a disciplinary measure:

Provided further that no gratuity shall be admissible under the rule to a Government servant re-employed after retirement.

Explanation,- "Pay" for the purpose of determining the amount of terminal or death gratuity under this rule shall include pay on the last day of service and dearness pay in the case of persons who draw pay in the pre-revised scales but shall not include special pay, personal pay and other emoluments classed as 'pay'. In the case of a Government servant who was on leave with or without allowances on the date of his retirement, discharge, invalidment or death, pay for this purpose shall be the pay which he drew immediately before proceeding on such leave, provided that the benefit of increase in pay, not actually drawn leave not exceeding 120 days or the first 120 days of earned leave where the total leave exceeds 120 days shall also be admissible.

#### **11. Terminal gratuity payable to a Government servant in quasi-permanent service:**

(1) A Government servant in quasi-permanent service, shall, if his services are terminated otherwise than as a disciplinary measure or by resignation, be eligible for a gratuity at the rate of one-half of a month's pay for each complete year of quasi-permanent service, such gratuity being payable on the basis of the pay admissible to such Government servant in respect of the specified post on the last day of his service.

(2) In the event of the death of a quasi-permanent Government servant while in service his family shall be granted gratuity on the following scale:-

- (i) if the death takes place after completion of three years but before completion of five years of total continuous service,- a gratuity equal to three month's pay;
- (ii) if the death takes place after completion of five years total continuous service of more, a gratuity equal to four month's pay or gratuity under sub-rule (1) above whichever is more:

Provided that this rule shall not apply to a Government servant borne on establishments to which Contributory Provident Fund benefits are attached.

Explanation,- For the purpose of this rule-

- (a) 'Quasi-permanent service' shall mean and include two-thirds of purely temporary service as defined in clause (d) of rule 2, if the total period of continuous service on the date of retirement, discharge, death or invalidment is not less than 5 years.
- (b) 'Pay' shall mean, besides pay, special pay attached to the specified post on the last day of his service.
- (c) In the case of those who draw pay in the pre-revised scales, the term 'pay' shall also include 'dearness pay'.
- (d) In the case of a quasi-permanent Government servant who holds or held a higher post or grade at the time of the termination of his services, the term 'pay' under this rule shall include also one-half of the difference between the pay in the specified post and the pay actually drawn in the higher officiating post or grade.
- (e) If, immediately before the termination of his services a quasi-permanent Government servant has been absent from duty on leave, the gratuity payable under this rule shall be computed at what it would have been had he not been absent from duty:

Provided that the amount of gratuity shall not be increased on account of increase in pay not actually drawn and that benefit of higher officiating or temporary pay is given only if it is certified that the Government servant would have continued to hold the higher officiating or temporary appointment but for his proceeding on leave:

Provided further that the benefit of increase in pay, not actually drawn due to increment or promotion to a post carrying a higher rate of pay falling during earned leave not exceeding 120 days or the first 120 days of earned leave where the total leave exceeds 120 days, shall be admissible.

- (f) The term 'continuous service occurring in this rule means the total service including spells of quasi-permanent and temporary service as defined in clauses (b) and (d) of rule 2 of these rules respectively.

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**EXTRACTS FROM THE CENTRAL CIVIL SERVICES (PENSION) RULES, 1972**

**Rule 6. Full pension subject to approved service:**

(1) Except for contributory family pension admissible under rule 54, full pension admissible under these rules shall not be sanctioned to a Government servant unless the service rendered by that Government servant has been approved by the pension sanctioning authority as satisfactory.

(2) If such service has not been satisfactory, the pension sanctioning authority may make such reduction in the amount of pension, or gratuity, or both, as that authority may think proper:

Provided that in a case where the pension sanctioning authority is subordinate to the appointing authority, no order regarding reduction in the amount of pension shall be made without the approval of the appointing authority:

Provided further the amount of pension shall not be reduced below the limit specified in sub-rule (5) of rule 49.

(3) For the purposes of sub-rule (2), the expression "appointing authority" shall mean the authority which is competent to make appointments to the service or post from which the Government servant retires.

(4) (a) The reduction referred to in sub-rule (2) shall be of a permanent character.

(b) The measure of reduction in the amount of pension shall be the extent by which the Government servant's service as a whole failed to reach a satisfactory standard and no attempt shall be made to equate the amount of reduction with the amount of loss caused to the Government.

(5) The pension sanctioned under these rules shall not be reduced although proof of the service having been not satisfactory may come to the notice of the pension sanctioning authority subsequent to the sanction of pension.

(6) Whenever in the case of a Government servant the President passes an order (whether original or appellate) awarding a pension including gratuity less than the maximum admissible under these rules, the Union Public Service Commission shall be consulted before the order is passed.

(7) Nothing in this rule shall apply-

- (a) where a part of pension has been withheld or ordered to be recovered under rule 9; or
- (b) where a part of pension has been reduced under rule 40; or
- (c) to effect any recovery which has the result of punishment.

**Rule 8. Pension subject to future good conduct:**

(1) (a) Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules.

(b) The pension sanctioning authority may, by order in writing, withhold or withdraw a pension or part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct:

Provided that no such order shall be passed by an authority subordinate to the authority competent to make an appointment to the post held by the pensioner immediately before his retirement from service:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in sub-rule (5) or rule 49.

(2) Where a pensioner is convicted of a serious crime by a court of law, action under sub-rule (1) shall be taken in the light of the judgment of the court relating to such conviction.

(3) In a case not falling under sub-rule (2), if the authority referred to in sub-rule (1) considers that the pensioner is prima facie guilty of grave misconduct, it shall before passing an order under sub-rule (1)-

- (a) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the pension sanctioning authority, such representation as he may wish to make against the proposal; and
- (b) take into consideration the representation if any, submitted by the pensioner under clause (a).

(4) Where the authority competent to pass an order under sub-rule (1) is the President, the Union Public Service Commission, shall be consulted before the order is passed.

(5) An appeal against an order under sub-rule (1), passed by any authority other than the President, shall lie to the President and the President shall, in consultation with the Union Public Service Commission, pass such orders on the appeal as he deems fit.

Explanation,- In this rule-

- (a) The expression 'serious crime' includes a crime involving an offence under the Official Secrets Act, 1923 (19 of 1923);
- (b) The expression 'grave misconduct' includes the communication or disclosure of any secret official code or pass-word or any sketch plan, model, article, note, documents or information, such as is mentioned in section 5 of the Official Secrets Act, 1923 (19 of 1923) (which was obtained while holding office under the Government so as to prejudicially affect the interests of the general public or the security of the State).

**Rule 9. Right of President to withhold or withdraw pension:**

(1) The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in sub-rule (5) of rule 49.

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment,-

- (i) shall not be instituted save with the sanction of the President,
  - (ii) shall not be in respect of any event which took place more than four years before such institution,
- and
- (iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 65 or rule 74, as the case may be, shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule,-

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the court.

### **THE ALL-INDIA SERVICES (DISCIPLINE AND APPEAL) RULES, 1969**

In exercise of the powers conferred by sub-section (1) of section 3 of the All-India Services Act, 1951 (61 of 1951), the Central Government, after consultation with the Governments of the States concerned, hereby makes the following rules, namely:-

#### **1. Short title and commencement:**

(1) These rules may be called the All-India Services (Discipline and Appeal) Rules, 1969.

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

#### **2. Definitions:**

In these rules, unless the context otherwise requires,-

(a) 'Commission' means the Union Public Service Commission ;

(b) 'disciplinary authority' means the authority competent under these rules to impose on a member of the service any of the penalties specified in rule 6;

(c) 'Government' means-

(i) in the case of member of the service serving in connection with the affairs of the Union or with a Union territory or serving under a foreign Government or outside India (whether on duty or on leave), the Central Government ; or

(ii) in the case of member of the service serving in connection with the affairs of a State, the Government of that State.

Explanation,- A member of the service whose services are placed at the disposal of any company, corporation, organization or any local authority by the Central Government or the Government of a State shall, for the purpose of this clause, be deemed to be a member of the service serving in connection with the affairs of the Union or the affairs of that State, as the case may be, notwithstanding that his salary is drawn from sources other than the Consolidated Fund of the Union or of that State;

(d) 'member of the service' means a member of an All-India Service as defined in section 2 of the All-India Services Act, 1951 (61 of 1951) and includes a member of a former Secretary of State's Service, who is now a member of the I.A.S. by virtue of clauses (a) and (b) or sub-rule (1) of rule 3 of the Indian Administrative Service (Recruitment) Rules, 1954 or a member of the Indian Police Service by virtue of clause (a) of sub-rule (1) of rule 3 of the Indian Police Service (Recruitment) Rules, 1954;

- (e) 'State Government concerned' in relation to a joint cadre, means the Government of all the States for which the joint cadre is constituted and includes the Government of a State nominated by the Governments of all such States to represent them in relation to a particular matter.

**3. Suspension during disciplinary proceedings:**

(1) If, having regard to the nature of the charges and the circumstances in any case, the Government which initiates any disciplinary proceedings is satisfied that it is necessary or desirable to place under suspension the member of the service against whom such proceedings are started, that Government may-

- (a) if the member of the service is serving under it, pass an order placing him under suspension, or
- (b) if the member of the service is serving under another Government, requests that Government to place him under suspension, pending the conclusion of the inquiry and the passing of the final order in the case:

Provided that in cases where there is a difference of opinion between two State Governments, the matter shall be referred to the Central Government for its decision.

(2) A member of the service, who is detained in official custody whether on a criminal charge or otherwise for a period longer than forty-eight hours, shall be deemed to have been suspended by the Government concerned under this rule.

(3) A member of the service in respect of, or against, whom an investigation, inquiry or trial relating to a criminal charge is pending may, at the discretion of the Government under which he is serving be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude.

(4) A member of the service shall be deemed to have been placed under suspension with effect from the date of conviction of, in the event of conviction for a criminal offence, he is not forthwith dismissed or removed or compulsorily retired consequent on such conviction, provided that the conviction carries a sentence of imprisonment exceeding forty-eight hours.

(5) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of the service under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(6) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of the service is set aside or declared or rendered void in consequence of or by a decision of a court of law, and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the member of the service shall be deemed to have been placed under suspension by the Central Government from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(7) (a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a member of the service is suspended or is deemed to have been suspended, whether in connection with any disciplinary proceeding or otherwise, and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the member of the service shall continue to be under suspension with the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order.

**4. Subsistence allowance during suspension:**

(1) A member of the service who is placed under suspension shall, during the period of such suspension, be entitled to receive payment from the Government, under whom he was serving at the time of suspension, as a subsistence allowance

an amount equal to the leave salary which he would have drawn under the leave rules applicable to him if he had been on leave on half pay or on half average pay:

Provided that, where the period of suspension exceeds twelve months, it shall be within the competence of the suspending authority to increase or reduce the amount of subsistence allowance for any period subsequent to the period of the first twelve months, subject to the following conditions, namely:—

- (i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding fifty per cent of the subsistence allowance drawn during the period of the first twelve months, if, in the opinion of the suspending authority, the period of suspension has been prolonged for reasons not directly attributable to the member of the service;
- (ii) the amount of subsistence allowance may be reduced by a suitable amount not exceeding fifty per cent of the subsistence allowance drawn during the period of the first twelve months, if, in the opinion of the suspending authority, the prolongation of the period of suspension has been due to reasons directly attributable to the member of the service:

Provided further that, in addition to the subsistence allowance, the Government may direct, to such extent and subject to such conditions as it thinks fit, the payment of—

- (i) any compensatory allowance admissible from time to time on the basis of pay, of which the member of the service was in receipt on the date of suspension, or that may be subsequently sanctioned; and
- (ii) dearness allowance not exceeding the amount admissible as such had he been on leave, on leave salary equal to the rate of subsistence allowance payable from time to time.

(2) No member of the service shall be entitled to receive payment under sub-rule (i) unless he furnishes a certificate that he is not engaged in any other employment, business, profession or vocation.

(3) The authority to grant subsistence allowance shall be the suspending authority.

#### **5. Pay, allowances and treatment of service on re-instatement.**

(1) When a member of the service, who has been dismissed, removed, compulsorily retired or suspended is re-instated or would have been re-instated but for his retirement on superannuation while under suspension the authority competent to order the re-instatement shall consider and make order as to—

- (a) the pay and allowances which shall be paid to the member of the service for the period of his absence from duty or for the period of suspension ending with the date of his retirement on superannuation as the case may be; and
- (b) whether or not the said period shall be treated as a period spent on duty.

(2)(a) Where such competent authority holds that the member of the service has been fully exonerated or, in the case of suspension, that it was unjustifiable, the member of the service shall be granted the full pay to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be, together with any allowance of which he was in receipt immediately prior to his dismissal, removal, compulsory retirement or suspension, or may have been sanctioned subsequently and made applicable to all members of the service.

(b) In all other cases, the member of the service shall be granted such proportion of such pay and allowance as such competent authority may direct:

Provided that the payment of allowance under this sub-rule shall be subject to all other conditions subject to which such allowances are admissible:

Provided further that the pay and allowances granted under this clause shall not be less than the subsistence and other allowances admissible under rule 4.

(3) (a) In a case falling under clause (a) of sub-rule (2), the period of absence from duty shall for all purposes be treated as a period spent on duty.

(b) In a case falling under clause (b) of sub-rule (2), the period of absence from duty shall not be treated as a period spent on duty unless the competent authority specifically directs, for reasons to be recorded in writing, that it shall be treated for any specific purpose.

### **PART III—PENALTIES AND DISCIPLINARY AUTHORITIES**

#### **6. Penalties:**

(1) The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a member of the service, namely:—

##### **MINOR PENALTIES :**

- (i) censure;
- (ii) withholding of promotions;

- (iii) recovery from pay of the whole, or part, of any pecuniary loss caused to Government by negligence or breach of orders; (z'v) (iv) withholding of increments of pay;

#### MAJOR PENALTIES:

- (v) <sup>A</sup> reduction to a lower stage in the time scale of pay for a specified period with further \* directions as to whether or not the member of the service will earn increments during the period <sup>of reduction</sup> and whether, on the expiry of such period, the reduction will or will not <sup>have the effect of postponing</sup> future increments of his pay;
- (vi) reduction to a lower <sup>time-scale of pay grade or post</sup> from which he was reduced, with or without <sup>restoration to that grade or post</sup> and his seniority and pay on such restoration to that grade or post;
- (vii) compulsory retirement:  
Provided that, if the circumstances of the case so warrant, the authority imposing the penalty may direct that the retirement benefits admissible to the member of the service under the All-India Services (Death-cum-Retirement Benefits) Rules, 1958, shall be paid at such reduced scale as may not be less than two-thirds of the appropriate scales indicated in Schedules 'A' and 'B' of the said rules;
- (viii) removal from service which shall not be a disqualification for future employment under the Government;
- (ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

*Explanation.*—The following shall not amount to a penalty within the meaning of this rule; namely:—

- (i) withholding of increments of pay of a member of the service for failure to pass a departmental examination in accordance with the rules or orders governing the service;
- (ii) stoppage of a member of the service at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;
- (iii) non-promotion of a member of the service whether in a substantive or officiating capacity, after due consideration of his case to a post or grade to which promotions are made by selection;
- (iv) reversion of a member of the service officiating in a higher grade or post to which promotions are made by selection, to a lower grade or post after a period of trial not exceeding three years on the ground that he is considered unsuitable for such higher grade or post, or on any administrative ground unconnected with his conduct;
- (v) reversion of a member of the service, appointed on probation to the service, to State service, during or at the end of the period of probation, in accordance with the terms of appointment or the rules and orders governing such probation;
- (vi) replacement of the services of a member of the service whose services have been borrowed from a State Government at the disposal of the State Government concerned;
- (vii) compulsory retirement of a member of the service under the provisions of the All-India Service (Death-cum-Retirement Benefit) Rules, 1958;
- (viii) termination of the service of a member of the service, appointed on probation, during or at the end of the period of probation, in accordance with the terms of the service or the rules and orders governing such probation.

(2) The penalty of compulsory retirement shall not be imposed on a member of the former Secretary of State's Services, referred to in clause (d) of rule 2.

#### 7. Authority to institute proceedings and to impose penalty.

(1) Where a member of the service has committed any act or omission which renders him liable to any penalty specified in rule 6—

- (a) if such act or omission was committed before his appointment to the service the Government, under whom he is for the time being serving shall alone be competent to institute disciplinary proceedings against him and, subject to the provisions of sub-rule (2), to impose on him such penalty specified in rule 6 as it thinks fit;
- (b) if such act or omission was committed after his appointment to the service, the Government under whom such member was serving at the time of the commission of such act or omission, shall alone be competent to institute disciplinary proceedings against him and subject to the provision of sub-rule (2), to impose on him such penalty specified in rule 6 as it thinks fit and the Government, under whom he is serving at the time of the institution of such proceedings, shall be bound to render all reasonable facilities to the Government instituting and conducting such proceedings.

*Explanation.*—In the event of re-organisation of a State, if such act or omission was committed while the officer was serving in connection with the affairs of the State, the Government, on whose cadre he is borne after re-organisation of the State, shall alone be competent to institute disciplinary proceedings against him and, subject to the provisions of sub-rule (2), to impose on him such penalty specified in rule 6 as it thinks fit.

(2) The penalty of dismissal, removal or compulsory retirement shall not be imposed on a member of the service except by an order of the Central Government.

(3) Where the punishing Government is not the Government on whose cadre the member is borne, the latter Government shall be consulted before any penalty specified in rule 6 is imposed:

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

#### PART IV—PROCEDURE FOR IMPOSING PENALTIES

##### 8. Procedure for imposing major penalties.

(1) No order imposing any of the major penalties specified in rule 6 shall be made except after an inquiry is held as far as may be, in the manner provided in this rule and rule 10, or, provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850) where such inquiry is held under that Act.

(2) 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 member of the service, it may appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1950, as the case may be, an authority to inquire into the truth thereof.

(3) Where a **Board** is appointed as the inquiring authority it shall consist of not less than two senior officers provided that at least one member of such a board shall be an officer of the service to which the member of **the service belongs**.

; (4) Where it is proposed to hold an inquiry against a member of the service under this rule and/or rule 10, the disciplinary authority shall draw up or caused to be drawn up—

- (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of 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 member of the service;
  - (b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(5) The disciplinary authority shall deliver or cause to be delivered to the member of the service a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the member of the service to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(6) (a) On receipt of the written statement of defence, the disciplinary authority may appoint, under sub-rule (2), an inquiring authority for the purpose of inquiring into such of the articles of charge as are not admitted, and, where all the articles of charge have been admitted by the member of the service in his written statement of defence, the disciplinary authority shall record its finding on each charge and shall act in the manner laid down in rule 9.

(b) If no written statement of defence is submitted by the member of the service, the disciplinary authority may, if it considers it necessary to do so, appoint, under sub-rule (2) an inquiring authority for the purpose.

(c) Where the disciplinary authority appoints an inquiring authority for holding an inquiry into such charge, it may by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(7) The disciplinary authority shall forward the inquiring authority—

- (i) a copy of the articles of charge and the statement of imputations of misconduct or misbehaviour;
- (ii) a copy of the written statement of defence if any, submitted by the member of the service;
- (iii) a copy of the statement of witnesses, if any, referred to in sub-rule (4);
- (iv) evidence proving the delivery of the documents referred to in sub-rule (4) to the member of the service; and
- (v) a copy of the order appointing the "Presenting Officer"

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

(9) The member of the service may take the assistance of any other Government servant to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits.

(10) If the member of the service who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written Statement of defence appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the member of the service thereon.

(11) The inquiring authority shall return a finding of guilt in respect of these articles of charge to which the member of the service pleads guilty.

(12) The inquiring authority shall, if the member of the service fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date, not exceeding thirty days, after recording an order that the member of the service may, for the purpose of preparing his defence—

- (i) inspect within five days of the order or, within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (4);
- (ii) submit a list of witnesses to be examined on his behalf;

*Note.*—If the member of the service applies orally or in writing for the supply of copies of the statement of witnesses mentioned in the list referred to in sub-rule (4), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority;

- (iii) give a notice within ten days of the order or, within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in sub-rule (4).

*Note.*—The member of the service shall indicate the documents required by him to be discovered or produced by the Government.

(13) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept with a requisition for the production of the document by such date as may be specified in such requisition:

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(14) On receipt of the requisition referred to in sub-rule (13), every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority.

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied, for reasons to be recorded by it in writing, that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the member of the service and withdraw the requisition made by it for the production or discovery of such documents.

(15) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by, or on behalf of, the disciplinary authority. The witnesses shall be examined by, or on behalf of the Presenting Officer and may be cross-examined, by, or on behalf of the member of the service. The Presenting Officer shall be entitled to re-examine the witnesses on any points, on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such question to the witnesses as it thinks fit.

(16) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the member of the service or may itself call for new evidence or recall and re-examine any witness and, in such case, the member of the service shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give to the member of the service an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the member of the service to produce new evidence, if it is of opinion that the production of such evidence is necessary in the interests of justice.

*Note.*—New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(17) When the case for the disciplinary authority is closed, the member of the service shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the member of the service shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(18) The evidence on behalf of the member of the service shall then be produced. The member of the service may examine himself in his own behalf if he so prefers. The witnesses produced by the member of the service shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(19) The inquiring authority may, after the member of the service closes his case, and shall, if the member of the service has not examined himself, generally question him on the circumstances appearing against him on the evidence for the purpose of enabling the member of the service to explain any circumstances appearing in the evidence against him.

(20) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed, and the member of the service or permit them to file written briefs of their respective cases, if they so desire.

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

(22) (a) Where a State Government which has caused to be inquired into the articles of any charge and, having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (vii) to (ix) of rule 6 should be imposed on the member of the service, the State Government shall forward the records of the inquiry to the Central Government suggesting imposition of the penalties specified in clauses (vii) to (ix) of rule 6.

(b) The Central Government may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, recall the witness and examine, cross-examine and re-examine such witnesses. If the Central Government do not find justification for imposing one of the penalties specified in clauses (vi) to (ix) of rule 6 in case referred to it by a State Government, then it shall refer it back to the State Government.

(23) Whenever an inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry, ceases to exercise jurisdiction therein and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that, if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses, whose evidence has already been recorded is necessary in the interests of justice, it may recall, examine, cross-examine and re-examine any such witness as hereinbefore provided.

(24) (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain—

- (a) the articles of charge and the statement of imputations of mis-conductor mis-behaviour;
- (b) the defence of the member of the service in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge; and
- (d) the findings on each article of charge and the reasons therefore.

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

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

(ii) The inquiring authority shall forward to the disciplinary authority the records of inquiry which shall include—

- (a) the report prepared by it under clause (i);
- (b) the written statement of defence, if any, submitted by the member of the service;
- (c) the oral and documentary evidence produced in the course of the inquiry;
- (d) written briefs, if any, filed by the Presenting Officer or the member of the service or both during the course of the inquiry; and
- (e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

## 9. Action on the inquiry report:

(1) The disciplinary authority may for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry. In report, and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 8 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 6 should be imposed on the member of the service, it shall notwithstanding anything contained in rule 10, make an order imposing such penalty:

Provided that, in every case, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the member of the service.

(4) (i) If the disciplinary authority, having regard to its findings on any or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (v) to (ix) of rule 6 should be imposed on the member of the service, it shall—

- (a) furnish to the member of the service a Copy of the report of such authority and a statement of its findings on each article of charge, together with brief reasons for its disagreement, if any, with the findings of the inquiring authority;
- (b) give the member of the service a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of the receipt of the notice or such further time, not exceeding fifteen days as may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the inquiry held under rule 8.

(ii) (a) In every case, the record of the inquiry, together with a copy of the notice given under clause (i) and the representation made in pursuance of such notice, if any, shall be forwarded by the disciplinary authority to the Commission for its advice.

(b) The disciplinary authority shall, after considering the representation, if any, made by the member of the service and the advice given by the Commission, determine what penalty, if any, should be imposed on the member of the service and make such order as it may deem fit.

#### **10. Procedure for imposing minor penalties:**

(1) Subject to the provision of sub-rule (3) of rule 9, no order imposing on a member of the service any of the penalties specified in clauses (i) to (iv) of rule 6 shall be made except after—

- (a) informing the member of the service in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;
- (b) holding an inquiry, in the manner laid down in sub-articles (4) to (23) of rule 5, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;
- (c) taking the representation, if any, submitted by the member of the service under clause (a), and the record of inquiry, if any, held under clause (b) into consideration;
- (d) recording a finding on each imputation of misconduct or misbehaviour; and
- (e) consulting the Commission.

(2) The record of proceedings in such cases shall include—

- (i) a copy of the intimation to the member of the service of the proposal to take action against him;
- (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;
- (iii) his representation, if any;
- (iv) the evidence produced during the inquiry;
- (v) the advice of the Commission;
- (vi) the findings on each imputation of misconduct or misbehaviour; and
- (vii) the orders on the case together with the reasons therefore.

#### **11. Cases of difference of opinion to be referred to Central Government:**

When there is any difference of opinion between a State Government and the Commission on any matter covered by these rules such matter shall be referred to the Central Government for its decision.

#### **12. Communication of orders:**

Orders made by the disciplinary authority shall be communicated to the member of the service who shall also be supplied with a copy of the report of the inquiring authority and a statement of the finding of the disciplinary authority, together with brief reasons for its disagreements, if any, with the findings of the inquiring authority (unless they have already been supplied to him) and also a copy of the advice, if any, given by the Commission and where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance.

#### **13. Common proceeding:**

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

#### **14. Special procedure in certain cases:**

Notwithstanding anything contained in rules 8 to 12—

- (i) where any penalty is imposed on a member of the service on the ground of conduct which has led to his conviction on a criminal charge; or

- (ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or
  - (iii) where the President is satisfied that, in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules,
- the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Commission be consulted where any orders are made in any case under this rule.

#### PART -V—APPEALS

##### 15. Orders against which no appeal lies:

- (1) Notwithstanding anything contained in this part, no appeal shall lie against—
  - (i) any order made by the President;
  - (ii) any order of an interlocutory nature or of the nature of step-in-aid for the final disposal of disciplinary proceeding, other than an order of suspension;
  - (iii) any order passed by an inquiring authority in the course of inquiry under rule 8;
  - (iv) any order by a competent authority withholding an appeal under rule 23.

(2) Nothing in clauses (i) and (iv) of sub-rule (1) shall be deemed to affect or abridge the right of a member of the service to submit a memorial to the President under, and in accordance with, the provisions of rule 26.

##### 16. Orders against which appeal lies:

(1) Subject to the provisions of rule 15 and the explanations to rule 6, a member of the service may prefer an appeal to the Central Government against all or any of the following orders, namely:—

- (i) an order of suspension made or deemed to have been made under rule 3;
- (ii) an order passed by a State Government imposing any of the penalties specified in rule 6:
- (iii) an order of a State Government which—
  - (a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules applicable to him; or
  - (b) interprets to his disadvantage the provisions of any such rule; or
  - (c) has the effect of superseding him in promotion to a selection post;
- (iv) an order of the State Government—■
  - (a) stopping him at the efficiency bar in the time scale of pay on the ground of his unfitness to cross the bar; or
  - (b) reverting him while officiating in a higher grade or post to a lower grade or post, otherwise than as a penalty; or
  - (c) reducing or withholding the pension or denying the maximum pension admissible to him under the rules; or
  - (d) determining the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof; or
  - (e) determining his pay and allowances—■
    - (i) for the period of suspension, or
    - (ii) from the date of dismissal, removal or compulsory retirement from service, or from the date of reduction to a lower grade, post, time scale of pay or stage in time-scale of pay, to the date of re-instatement or restoration to be paid to him on his re-instatement or restoration; or
  - (f) determining whether or not the period from the date of suspension or from the date of dismissal, removal, compulsory retirement or reduction to lower grade, post, time scale of pay or stage in a time scale of pay, to the date of his re-instatement or restoration shall be treated as a period spent on duty for any purpose.

Explanation.—In this rule—

- (i) the expression 'member of the service' includes a person who has ceased to be in Government service;
- (ii) the expression 'pension' includes additional pension, gratuity and any other retirement benefit.

**17. Period of limitation of appeals:**

No appeal preferred under these rules shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copy of the order appealed against is delivered to the appellant:

Provided that the appellate authority may entertain the appeal after the expiry of the said period if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

**18. Form and content of appeal:**

(1) Every member preferring an appeal shall do so separately and in his own name.

(2) Every appeal preferred under these rules shall be addressed to the Secretary to the Government of India in the Ministry of Home Affairs and shall—

- (a) contain all material statements and arguments relied on by the appellant;
- (b) contain no disrespectful or improper language; and
- (c) be complete in itself.

(3) Every such appeal shall be submitted through the head of the office under whom the appellant is for the time being serving and through the Government from whose order the appeal is preferred.

(4) The authority which made the order appealed against shall, on receipt of a copy of every appeal, which is not withheld under rule 22, forward the same with its comments thereon together with the relevant records to the appellate authority without any avoidable delay and without waiting for any direction from the Central Government.

**19. Consideration of Appeal:**

(1) In the case of an appeal against an order of the State Government imposing any penalty specified in rule 6, the Central Government shall consider—

- (a) whether the procedure laid down in these rules has been complied with, and, if not,
- (b) whether such non-compliance has resulted in violation of any provision of the Constitution of India or in the failure of justice;
- (c) whether the findings of the disciplinary authority are warranted by the evidence on record; and
  - (i) whether the penalty imposed is adequate, inadequate or severe; and pass orders—
  - (ii) confirming, enhancing, reducing, or setting aside the penalty; or
  - (ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case:

**Provided that—**

- (i) the Commission shall be consulted in all such cases where such consultation is necessary;
- (ii) if the enhanced penalty which the Central Government proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 6 and an inquiry under rule 8 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 14, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of rule 8 and thereafter, on a consideration of the proceedings of such inquiry and after giving the appellant a reasonable opportunity, as far as may be in accordance with the provisions of sub-rule (4) of rule 9, of making representation against the penalty proposed on the basis of the evidence adduced during such inquiry, make such orders as it may deem fit;

- (iii) if the enhanced penalty which the Central Government proposes to impose is one of the penalties specified in clauses (v) to (iv) of rule 6 and an inquiry under rule 8 has already been held in the case, the Central Government shall, after giving the appellant a reasonable opportunity as far as may be in accordance with the provisions of sub-rule (4) of rule 9, of making representations against the penalty proposed on the basis of the evidence adduced during the inquiry, make such orders as it may deem fit; and
- (iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of rule 10, of making representation against such enhanced penalty.

(2) In an appeal against any other order specified in rule 16 of the Central Government shall consider all the circumstances of the case and make such orders as it may deem just and equitable.

**20. Implementation of orders on appeal:**

Every order passed by the Central Government in appeal under any of the relevant provisions of these rules shall be final and the State Government concerned shall forthwith give effect to such order.

**21. Circumstances in which appeals may be withheld:**

- (1) The State Government, from whose order an appeal is preferred, may withhold the appeal if—
  - (a) it is an appeal in a case in which under these rules there is no right of appeal, or
  - (b) it does not comply with the provisions of rule 18, or
  - (c) it is not preferred within forty-five days after the date on which the orders appealed against were received by the appellant and no reasonable cause is shown for the delay, or
  - (d) it is a repetition of a previous appeal which has already been decided and no new facts or circumstances are adduced which afford grounds for reconsideration of the case.
- (2) In every case in which an appeal is withheld, the appellant shall be informed of the fact and the reasons therefore.
- (3) An appeal withheld on account only of failure to comply with the provisions of rule 18 may be re-submitted at any time within one month of the date on which the appellant has been informed of the withholding of the appeal, and, if re-submitted in a form which complies with the said provisions, shall not be withheld.

**22. List of appeals withheld:**

The State Government shall forward to the Central Government on the first day of January and July every year a list of appeals to the Central Government withheld by them under rule 21 during the preceding six months together with the reasons for withholding the same.

**23. Appellate authority may call for any appeal withheld:**

The Central Government may call for any appeal which has been withheld by any State Government under rule 22, deal with it in the manner laid down in rule 19 and pass such orders thereon as the Central Government thinks fit.

**PART VI—REVIEW AND MEMORIALS**

**24. Review:**

(1) Notwithstanding anything contained in these rules, the Central Government or the State Government concerned as the case may be, may at any time not exceeding 6 months from the date of the order passed in appeal, if an appeal has been preferred, and where no such appeal had been preferred within one year of the original order which gives the cause of action, either on its own motion or otherwise call for the records of any order relating to suspension or any inquiry and review any order made under these rules or under the rules repealed by rule 30 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may—

- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made the order directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
- (d) pass such orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made unless the member of the service concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of rule 6 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in these clauses, no such penalty shall be imposed except after an inquiry in the manner laid down rule 8 and after giving a reasonable opportunity to the member of the service concerned to show cause against the penalty proposed of the evidence adduced during such inquiry and except after consultation with the Commission:

Provided further that where the original order was passed by the Central Government or the State Government concerned, as the case may be, after consultation with the Commission, it shall not be revised except after consultation with the Commission.

- (2) No proceeding for review shall be commenced until after—
  - (i) the expiry of the period of limitation for an appeal, or
  - (ii) the disposal of the appeal, where any such appeal has been preferred.
- (3) An application for review shall be dealt within the same manner as if it were an appeal under these rules.

## 25. Memorial

(1) A member of the service shall be entitled to submit a memorial to the President against any order of the Central Government or the State Government by which he is aggrieved within a period of three years from the date of the passing of such order.

(2) Every such memorial shall be authenticated by the signature of the memorialist and submitted by the memorialist on his own behalf.

(3) Every memorial submitted under these rules shall—

- (a) contain all material statements and arguments relied up by the memorialists;
- (b) contain no disrespectful or improper language;
- (c) be complete in itself; and
- (d) end with a specific prayer.

(4) If the memorial is against the orders of a State Government, it should be submitted through the State Government concerned and if the memorial is against the orders of the Central Government, it shall be submitted through the Ministry or the appropriate authority N the Central Government under whom the member of the service is for the time being serving.

(5) A memorial forwarded under sub-rule (4) shall be accompanied by a concise statement of facts material thereto and, unless there are special reasons to the contrary, with an expression of opinion thereon—

- (a) of the State Government concerned, or
- (b) of the Ministry or the appropriate authority in the Central Government under whom the member of the service is for the time being serving, or
- (c) of both.

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

## 26. Forwarding of advance copies:

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

## PART VII—MISCELLANEOUS

**27. Service of orders, notices etc:**

Every order, notice and other process made or issued under these rules shall be served in person on the member of the service concerned or communicated to him by registered post.

**28. Power to relax time limit and condone delay:**

Save as otherwise expressly provided in these rules, the Central Government or the State Government, as the case may be, may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in these rules for anything required to be done under these rules or condone any delay.

**29. Supply of copy to Commission's advice:**

Whenever the Commission is consulted as provided in these rules, a copy of the advice by the Commission and, where such advice has not been accepted, also a brief statement of the reasons for such non-acceptance, shall be furnished to the member of the service concerned along with a copy of the order passed in the case.

**30. Repeal and saving:**

(1) The All-India Services (Discipline and Appeal) Rules, 1955, are hereby repealed:

Provided that—

- (a) such repeal shall not affect the previous operation of the said rules, or anything done, or any action taken, there under;
- (b) any proceedings under the said rules, pending at the commencement of these rules shall be continued and disposed of, as far as may be, in accordance, with the provisions of these rules, as if such proceedings were proceedings under these rules.

(2) Nothing in these rules shall be construed as depriving any person to whom these rules apply of any right of appeal which had accrued to him under the rules hereby repealed (hereinafter referred to as the repealed rules).

(3) An appeal pending at the commencement of these rules against any order made before such commencement under the repealed rules shall be considered and orders thereon shall be made, in accordance with these rules, as if such orders were made and the appeal was preferred under these rules.

(4) As from the commencement of these rules any appeal or application for review against any order made before such commencement under the repealed rules shall be preferred or made under these rules, as if such orders were made under these rules.

Provide that nothing in these rules shall be construed as reducing any period of limitation for any appeal or review provided by the repealed rules.

**31. Removal of doubts:**

Where a doubt arise as to the interpretation of any of the provisions of these rules, the matter shall be referred to the Central Government for its decision.

### **THE ALL-INDIA SERVICE (CONDUCT) RULES, 1968**

In exercise of the powers conferred by sub-section (1) of section 3 of the All-India Services Act, 1951 (61 of 1951) the Central Government after consultation with the Government of the States concerned, hereby makes the following rules, namely:-

**1. Short title and commencement:**

- (1) These rules may be called the All-India Services (Conduct) Rules, 1968.
- (2) They shall come into force on the date of their publication in the Official Gazette.

## 2. Definitions:

In these rule , unless the context otherwise requires,-

- (a) "Government" means-
  - (i) in the case of a member of the service serving in connection with the affairs of the Union, the Central Government; or
  - (ii) in the case of member of the service serving under a Foreign Government or outside India (whether on duty or on leave), the Central Government; and
  - (iii) in the case of a member of the service serving in connection with the affairs of a State, the Government of that State;

Explanation. – A member of the service whose service are placed at the disposal of a company, corporation or other organization or a local authority by the Central Government or the Government of a State Shall, for the purposes of these rules, be deemed to be a member of the service serving in connection with the affairs of the Union or in connection with the affairs of that State, as the case may be, notwithstanding that his salary is drawn from the sources other than the Consolidated Fund of India or the Consolidated Fund of that State:

- (b) "member" of family, in relation to a member of the service, includes-
  - (i) the wife or husband as the case may be, of such member, whether residing with him or her or not, but does not include a wife or husband separated from the member of the service by a decree or order of a competent court;
  - (ii) the son or daughter or the step-son or step-daughter of such member and wholly dependent on him or her, but does not include a child or step-child who is no longer in any way dependent on him or her or of whose custody the member of the service has been deprived by or under any law; and
  - (iii) any other person related, whether by blood or marriage, to such member or to his or her wife or husband, as the case may be, and wholly dependent on such member;
- (c) "member of the service" means a member of an All-India Service as defined in section 2 of the All-India Service Act, 1951 (61 of 1951).

## 3. General:

- (1) Every member of the service shall at all times, maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the service.
- (2) Every member of the service shall take all possible steps to ensure integrity of, and devotion to duty by, all Government servants for the time being under his control and authority.
- (3) No member of the service shall, in the performance of his official duties or in exercise of powers conferred on him.-
  - (i) act otherwise than in his best judgment except when he is acting under the direction of his official superior and he shall obtain such direction in writing, wherever practicable, and where it is not practicable he shall obtain written confirmation as soon thereafter as possible;
  - (ii) evade the responsibility devolving legitimately on him and seek instruction from, or approval of, a superior authority when such instruction or, approval is not necessary in the scheme of distribution of powers and responsibilities.

### (4) Employment of near relatives in companies or firms:

(1) No member of the service shall use his position or influence directly or indirectly to secure employment for any member of his family with any company or firm.

(2) (a) No member of the service shall, except with the previous sanction of the Government, permit his son, daughter or dependent to accept employment with any company or firm having official dealings with the Government:

Provided that where the acceptance of such employment cannot await the sanction of the Government of is otherwise considered urgent, the matter shall be reported to the Government; and the employment may be accepted provisionally subject to the sanction of the Government.

(b) A member of the service shall, as soon as he becomes aware of the fact of acceptance by a member of his family of an employment with any company or firm, report to the Government the fact of such acceptance and also whether he has or has any official dealings with that company or firm:

Provided that no such report shall be necessary if the member of the service has already obtained sanction of, or sent a report to, the Government under clause (a).

(3) (a) No member of the service shall in the discharge of his official duties, deal with any matter relating to, or award any contract in favour of, a company or firm or any other person, if any member of his family is employed in that company or under that person or if he or any member of his family is interested in such company or firm of other person in any other manner.

(b) In any case referred to in clause (a), the member of the service shall refer the matter to his official superior and the case shall thereafter be disposed of according to the instructions of the official superior.

#### **5. Taking part in politics and elections;**

(1) No member of the service shall be a member of, or be otherwise associated with, any political party or any organization which takes part in politics, nor shall he take part in, or subscribe in aid of, or assist in any other manner, any political movement or political activity.

(2) It shall be the duty of every member of the service to Endeavour to prevent any member of his family from taking part in or subscribing in aid of, or assisting in any other manner, any movement or activity which is, or tends directly or indirectly to be, subversive of the Government as by law established, and where a member of the service is unable to prevent member of his family from taking part in or subscribing in aid of, or assisting in any other manner, any such movement or activity, he shall make a report to that effect to the Government.

(3) If any question arises whether any movement or activity falls within the scope of this rule, the question shall be referred to the Government for its decision.

(4) No member of the service shall canvass or otherwise interfere with, or use his influence in connection with, or take part in, an election to any Legislature or local authority:

Provided that-

- (i) a member of the service qualified to vote at any such election may exercise his right vote but where he does so he shall give no indication of the manner in which he propose to vote or has voted ; and
- (ii) a member of the service shall not be deemed to have contravened the provisions of this sub-rule by reason only that he has assisted in the conduct of any election in the due performance of a duty imposed on him by or under any law for the time being in force.

Explanation.- The display by member of the service on his person, vehicle or residence of any electoral symbol shall amount to using his influence in connection with an election, within the meaning of this sub-rule.

#### **6 Connection with press or radio:**

(1) No member of the service shall, except with the previous sanction of the Government or any other periodical publication.

(2) No member of the service shall except with the previous sanction of the Government or any other authority empowered by it in this behalf, or except in the bona fide discharge of his duties-

- (a) publish a book himself or through a publisher, or contribute an article to a book or a compilation of articles, or
- (b) participate in a radio broadcast or contribute an article or write a letter to a newspaper or periodical,

either in his own name or anonymously or pseudonymously or in the name of any other person:

Provided that no such sanction shall be required –

- (i) if such publication is through a publisher and is of a purely literary, artistic or scientific character; or
- (ii) if such contribution, broadcast or writing is of a purely literary, artistic or scientific character.

#### **7. Criticism of Government;**

No member of the service shall, in any radio broadcast or in any document published anonymously, pseudonymously or in his own name or in the name of nay other person or in any communication to the press or in any public utterance, make any statement of fact or opinion –

- (i) which has the effect of an adverse criticism of any current or recent policy or action of the Central Government or a State Government; or
- (ii) which is capable of embarrassing the relations between the Central Government and any State Government; or
- (iii) which is capable of embarrassing the relations between the Central Government and any State Government of any foreign State:

Provided that nothing in this rule shall apply to any statement made or views expressed by a member of the service in his official capacity and in the due performance of the duties assigned to him.

#### **8. Evidence before committees, etc:**

(1) Save as provided in sub-rule (3), no member of the service shall except with the previous sanction of the Government, give evidence in connection with any inquiry conducted by any person, committee or other authority.

(2) Where any sanction has been accorded under sub-rule (1) and member of the service giving such a evidence shall criticised the policy or any action of the Central Government or of a State Government.

(3) Nothing in this rule shall apply to:-

(a) evidence given at any inquiry before an authority appointed by the Government, or by Parliament or by a State Legislature; or

(b) evidence given in any judicial inquiry; or

(c) evidence given at departmental inquiry ordered by any authority subordinate to the Government.

(4) No member of the service giving any evidence referred to in sub-rule (3) shall give publicity to such evidence.

#### **9. Unauthorised communication of information:**

No member of the Service shall except in accordance with any general or order of the Government or in performance in good faith of the duties assigned to him, communicate directly or indirectly any official document or part thereof or information to any Government servant or any other person to whom he is not authorised to communicate such document or information.

explanation:- Quotation by a member of the service (in his representations to the head of office or head of Department or President) of, or from, any letter, circular or office memorandum or from the notes on any file to which he is not authorised to have access, or which he is not authorised to keep, in his personal custody or for personal purposes, shall amount to unauthorised communication of information within the meaning of this rule.

#### **10. Subscriptions:**

No member of the service shall, except shall, except with the previous sanction of the Government or of such authority as may be empowered by it in this behalf, ask for, or accept, contributions to or otherwise associate himself with the raising of, any fund of other collections in cash or in kind in pursuance of any object whatsoever.

#### **11. Gifts:**

(1) Save as provided in these rules no member of the service shall accept, or permit his wife or any other member of his family or any other person acting on his behalf to accept, any gift exceeding seventy five rupees in value without the previous sanction of the Government.

**Explanation.-** For the purposes of this rule "gift" includes free transport, free boarding, free lodging or any other service or pecuniary advantage when provided by a person other than a near relative or personal friend having no official dealing with the member of the service but does not include a casual meal, casual lift or other social hospitality.

(2) Where it is not practicable for a member of the service to obtain the previous sanction of the Government under sub-rule (1) for accepting, or permitting his wife or any other member of his family or any other person acting on his behalf to accept, any gift exceeding seventy-five rupees in value, he shall, within one month of the acceptance of such gift make a report to the Government stating the circumstances under which such gift was accepted, and if the Government does approve of such acceptance, he shall return the gift to the donor.

(3) On occasions such as weddings, anniversaries, funerals and religious functions, when making of gifts is in conformity with the prevailing religious or social customs, gifts may be accepted:-

(a) from near relatives; provided that a report shall be made to the Government if the value of any such gift exceeds five hundred rupees;

(b) from personal friends having no official dealings with the member of the service; provided that a report shall be made to the Government if the value of any such gift exceeds two hundred rupees.

(4) Members of the service shall avoid accepting lavish hospitality or frequent hospitality from individuals having official dealings with them or from industrial or commercial firms of other organizations.

## 12. Public demonstrations in honour of Government servants:

(1) No member of the Service shall, except with the previous sanction of the Government, receive any complimentary or valedictory address or accept any testimonial or attend any meeting or entertainment held in his honour or in the honour of any other Government servant:

Provided that nothing in this rule shall apply to—

- (i) a farewell entertainment of a substantially private and informal character held in honour of a member of the service or any other Government servant on the occasion of his retirement or transfer or of any person who has recently quit service of Government; or
- (ii) the acceptance of simple and inexpensive entertainments arranged by public bodies or institutions.

(2) No member of the service shall exercise pressure of any sort on any Government servant to induce him to subscribe towards any farewell entertainment even if it is of a substantially private and informal character.

## 13. Private trade or employment:

(1) No member of the service shall except with the previous sanction of the Government engage directly or indirectly in any trade or business or undertake any employment:

Provided that a member of the service may, without such sanction, undertake honorary work of a social or charitable nature or occasional work of the literary, artistic or scientific character, subject to the conditions that his official duties do not thereby suffer; but he shall not undertake, or shall discontinue, such work if so directed by the Government.

*Explanation.*—Canvassing by a member of the service in support of the business of insurance agency or commission agency, owned or managed by his wife or any other member of his family shall be deemed to be a breach of this sub-rule.

(2) Every member of the service shall, if any member of his family is engaged in<sup>1</sup> a trade or business, or owns or manages an insurance agency or commission agency, report that fact to the Government.

(3) No member of the service shall, without the previous sanction of the Government or except in the discharge of his official duties, take part in the registration, promotion or management of any Bank or other company registered under the Companies Act, 1956 or any other law for the time being in force, or any co-operative society the primary object of which is a commercial purpose:

Provided that a member of the service may take part in the registration, promotion or management of a co-operative society substantially for the benefit of Government servants or of a literary scientific or charitable society registered under the Societies Registration Act, 1860 (21 of 1860), or any corresponding law in force.

*Explanation.*—In this sub-rule "co-operative society" means a society registered or deemed to be registered, under the Co-operative Societies Act, 1912 (2 of 1912) or any other relating to co-operative societies for the time being in force in any State.

(4) No member of the service shall accept any fee for any work done for any public body ~~if not~~ private person without the sanction of the Government.

## 14. Investments, lending and borrowing:

(1) No member of the service shall speculate in any stock, share or other investments.

*Explanation.*—Frequent purchase or sale or both, of shares, securities or other investments shall be deemed to be speculation within the meaning of this sub-rule.

(2) No member of the service shall make, or permit any member of his family or any person acting on his behalf to make any investment which is likely to embarrass or influence him in the discharge of his official duties.

(3) If any question arises whether any transaction is of the nature referred to in sub-rule (1) or sub-rule (2) it shall be referred to the Government, for its decision.

(4) (i) No member of the service shall, save in the ordinary course of business with a bank or public limited company, himself or through any member of his family or any person acting on his behalf—

- (a) lend or borrow or deposit money as a principal or agent, to, or from, or with, any person or firm or private limited company within the local limits of his authority or with whom he is likely to have official dealings or otherwise place himself under pecuniary obligation to such person or firm; or
- (b) lend money to any person at interest or in manner where by return in money or kind is charged or paid:

Provided that a member of the service may give to, or accept from a relative or a personal friend a purely temporary loan of small amount free of interest or operate a credit account with a *bona fide* tradesman or make an advance of pay to his private employee:

Provided further that nothing in this sub-rule shall apply in respect of any transaction, entered into by a member of the service with the previous sanction of the Government.

(II) When a member of the service is appointed or transferred to a post of such nature as would involve him in the breach of any of the provisions of sub-rule (2) or sub-rule (4), he shall forthwith report the circumstances to the Government and shall thereafter act in accordance with such order as may be made by the Government.

#### 15. Insolvency and habitual indebtedness:

(1) A member of the service shall so manage his private affairs as to avoid habitual indebtedness or insolvency.

(2) A member of the service against whom any legal proceedings is instituted for recovery of any debt due from or for adjudging him as an insolvent, shall forthwith report the full facts of such legal proceedings to the Government.

(3) The burden of proving that indebtedness or insolvency is the result of circumstances which, with the exercise of ordinary diligence, the member of the service could not have foreseen or over which he had no control, and has not proceeded from extravagant or dissipated habits, shall be upon him.

#### 16. Movable, immovable and valuable property:

(1) Every person shall,—

- (a) where such person is a member of the service at the commencement of these rules, before such date after such commencement as may be specified by the Government in this behalf; or
- (b) where such person becomes a member of the service after such commencement, on his first appointment to the service and, thereafter at such intervals as may be specified by the Government in this behalf, submit a return of his assets and liabilities in such form as may be specified by the Government.

(2) The return to be submitted under sub-rule (1) shall contain full particulars regarding—

- (a) immovable property owned, acquired or inherited by him or held by him on lease mortgage, either in his own name or in the name of any member of his family or in the name of any other person;
- (b) shares, debentures, postal cumulative time deposits and cash including bank deposits owned, acquired or inherited by him or held by him, either in his own name or in the name of any member of his family or in the name of any other person;
- (c) movable property other than those specified in clause (b);
- (d) debts and other liabilities incurred by him directly or indirectly.

*Note.*—In all returns the values of items of movable property, less than one thousand rupees in value may be added and shown as a lump sum and the value of articles of daily use such as clothes, utensils, crockery and books needs not be included.

(3) No member of the service shall, except with the previous knowledge of the Government—

- (a) acquire any immovable property by lease, mortgage, purchase, gift or otherwise, either in his own name or in the name of any member of his family; or
- (b) dispose of by lease, mortgage, sale, gift or otherwise any immovable property owned by him or held by him either in his own name or in the name of any member of his family:

Provided that the previous sanction of the Government shall be obtained if any such transaction is—

- (i) with a person having official dealings with the member of the service; or
- (ii) otherwise than through a regular or reputed dealer.

(4) A member of the service shall report to the Government within one month from the date of every transaction entered into by him either in his own name or in the name of a member of his family in respect of movable property if the value of such property exceeds one thousand rupees:

Provided that the previous sanction of the Government shall be obtained if any such transaction is—

- (i) with a person having official dealings with the member of the service; or
- (ii) otherwise than through a regular or reputed dealer.

(5) The Government or any authority empowered by it in this behalf may, at any time, by general or special order, require a member of the service to furnish within a period specified in the order, a full and complete statement of such movable or immovable property held or acquired by him or on his behalf or by any member of his family as may be specified in the order and such statement shall if so required by the Government or by the authority so empowered, include details of the means by which, or the source from which, such property was acquired.

*Explanation.*—For the purposes of this rule, the expression 'movable property' INCLUDES inter alia the following property, namely:—

- (a) jewellery, insurance policies the annual premia of which exceeds *one thousand rupees* or one-sixth of the total annual emoluments received by the *member of the service* from the Government, whichever is less, shares, securities and *debentures*;
- (b) loans advanced by or to such member of the service, whether secured *or not*;
- (c) motor cars, motor cycles, horses, or any other means of conveyance; *and*
- (d) refrigerators, radios and radiograms.

**17. Vindication of acts and character of members of the service:**

No member of the service shall, except with the previous sanction *of the Government*, have recourse to any court or to the press for the vindication of any official *act which has been the* subject matter of adverse criticism or any attack of a defamatory character.

*Explanation.*—Nothing in this rule shall be deemed to prohibit a *member of the service* from indicating his private character or any act done by him in his private *capacity*; *provided that he* shall submit a report to the Government regarding such action.

**18. Canvassing:**

No member of the service shall bring or attempt to bring any political *or other influence* to bear upon any superior authority to further his interests in respect of *a matters pertaining to his* service under the Government.

**19. Bigamous marriages:**

- (1) No member of the service shall enter into, or contract, a marriage *with a* person having I spouse living; and
- (2) No member of the service, having a spouse living, shall enter into, or *contract, a marriage* with any person:

Provided that the Government may permit a member of the service *to enter into .or contract, any* such marriage as is referred to in clause (1) or clause (2), if it is satisfied that—

- (a) such marriage is permissible under the personal law applicable to such *member of the* service and the other party to the marriage; and
- (b) there are other grounds for so doing.

**20. Consumption of intoxicating drinks and drugs:**

A member of the service shall—

- (a) strictly abide by any law relating to intoxicating drinks or drugs in force in any area in which he may happen to be for the time being;
- (b) take due care that the performance of his duties is not prejudiced or affected in any by influence of such drinks or drugs;
- (c) not appear in a public place in a state of intoxication;
- (d) not habitually use such drinks or drugs to excess.

**21. Interpretation:**

*if any* doubt arises as to the interpretation of these rules, the Central Government shall *decide the* same.

**22. Delegation of powers:**

*The* Government may, by general or special order, direct that any power exercisable by it *under rules* (except the power under rule 21 or the power under this rule), shall, subject to such *conditions, if any*, as may be specified in the order, be exercisable also by such officer or authority as *may be* specified in the order.

**23. Cesser and saving:**

*The All-India Service (Conduct) Rules, 1954* (hereinafter referred to as the said rules), shall *cease to be in* force:

- . Provided *that* the case shall not affect—(a) *the* previous operation of, or anything duly done or suffered under, the said rules; or (b) *any* right, privilege, obligation or liability acquired, accrued or incurred under the said rules; or
- (c) *any* penalty or punishment incurred under the said rules; or
- (d) *any* investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty or punishment as aforesaid;

*and my* such investigation, *legal* proceeding OR remedy may be instituted, continued or enforced *and any such* penalty ,or punishment may be imposed as if the said rules had not ceased to be in *force*.

**EXTRACTS FROM THE ALL INDIA SERVICES (DEATH-CUM-RETIREMENT BENEFITS) RULES, 1958**

**6. Recovery from pension:**

(1) The Central Government reserves to itself the right of withholding or withdrawing a I pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from pension of the whole or part of any pecuniary loss caused to the Central or a State Government, if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or a State Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement:

Provided that—

- (a) such departmental proceeding, if instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall; after the final retirement of the pensioner, be deemed to be a proceeding under this sub-rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service;
- (b) such departmental proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment—
  - (i) shall not be instituted save with the sanction of the Central Government;
  - (ii) shall be in respect of an event which took place not more than four years before the institution of such proceeding; and
  - (iii) shall be conducted by such authority and in such place or places as the Central Government may direct and in accordance with the procedure applicable to proceeding on which an order of dismissal from service may be made;
- (c) such judicial proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall not be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution.

*Explanation.*—For the purpose of this rule—

(a) a departmental proceeding shall be deemed to be instituted, when the charges framed against the pensioner are issued to him or, if he has been placed under suspension from an earlier date, on such date; and (h) a judicial proceeding shall be deemed to be instituted—

- (i) in the case of criminal proceedings, on the date on which a complaint is made or a charge sheet is submitted, to the criminal court; and
- (ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court.

(2) Where any departmental or judicial proceeding is instituted under sub-rule (1), or where a departmental proceeding is continued under clause (a) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding, final orders are passed a provisional pension or death-cum-retirement gratuity even though he produces medical admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension, but no gratuity or death-ram-retirement gratuity shall be paid to him until the conclusion of such proceeding and the issue of final orders thereon.

(3) Payment of provisional pension made under sub-rule (2) shall be adjusted against the final retirement benefits sanction to the pensioner upon conclusion of the aforesaid proceeding but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

*Note.*—The grant of pension under this rule shall not prejudice the operation of rule 20 of these rules, when final pension is sanctioned upon conclusion of the proceeding.

**GOVERNMENT OF INDIA'S DECISIONS :**

(1) The Government of India have decided that recovery from pension of the whole or part of any pecuniary loss caused to the Central or a State Government should not ordinarily be made at a rate exceeding one-third of the gross pension originally sanctioned, including any amount, which may have been commuted.

[G. O., MHA letter No. 2/27/60-A1S (III), dated 27th June, 1960]

(2) It has been decided that the Union Public Service Commission shall be consulted before passing final orders in respect of the following matters:—

- (i) withholding or withdrawing any pension or a pail of it for a specified period or - indefinitely u under sub-rule (2) of rule 3;
- (ii) effecting recovery from pension under rule 6;

(iii) reduction in the amount of retirement benefits under sub-rule (2) of rule 20

[G.I. MHA letter No. I/4/55-AIS (III), dated 24th August, 1958, read with letter No. 12/ 13/60 AIS(II), dated 28th November, 1960].

**THE HIMACHAL PRADESH PUBLIC SERVICE COMMISSION (EXEMPTION FROM CONSULTATION) REGULATIONS, 1973**

1 • These Regulations shall come into force with immediate effect.

2. In these Regulations, unless the context otherwise requires: -

(a) "commission" means the Himachal Pradesh Public Service Commission;

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

(c) "governor" means the Governor of the State of Himachal Pradesh.

3. It shall not be necessary to consult the Commission in regard to any of the matters mentioned in sub-clauses (a) and (b) of clause (3) of the article 320 of the Constitution in the case of the services and posts specified in the Schedule to these Regulations:

Provided that it shall not be necessary, for the Commission to be consulted in regard to promotion or transfer to a post other than those mentioned in the Schedule, if the promotion or transfer takes place in the same class and in the same department.

4. It shall not be necessary to consult the Commission as respects any of the matters mentioned in sub-clauses (a) to (e) of clause (3) of article 320 of the Constitution in the case of Officers of the Armed Forces of the Union holding posts in connection with the affairs of the State of Himachal Pradesh.

5. It shall not be necessary to consult the Commission on the suitability of candidates for: -

(a) appointment to a temporary post, for a period not exceeding six months;

(b) appointment to a permanent post of a person temporarily for a period not exceeding six months if owing to an emergency having arisen, it is necessary in the public interest to fill the vacancy immediately and there is likely to be undue delay in making the appointment after consultation with the Commission.

6. It shall not be necessary to consult the Commission in regard to any of the matters mentioned in sub-clauses (a) to (e) of clause (3) of article 320 of the Constitution in respect of a Member of All India Service.

7. It shall not be necessary to consult the Commission for appointment of—

(a) an I.A.S. Officer or a Member of the State Civil Service on the select list prepared and maintained under the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, to an ex-cadre post;

(b) an H. A.S. Officer to an ex-cadre post.

*Explanation*

(i) For the purpose of Regulation (7) (a), an ex-cadre post shall mean a temporary post created in any scale of the I.A.S. outside the I.A.S. cadre.

(ii) For purpose of Regulation 7(b), an ex-cadre post shall mean a temporary post created in either the time-scale or the selection grade of H.A.S. outside the H.A.S. cadre.

8. It shall not be necessary to consult the Commission in regard to confirmation of a Government servant in any post or service.

9. It shall not be necessary to consult the Commission in regard to the making of any order in any disciplinary case other than—

(a) An original order by the Governor imposing any of the following penalties:—

(i) withholding of increments with cumulative effect;

(ii) reduction to a lower service, grade or post or to a time scale or to a lower stage in time scale;

(iii) compulsory retirement;

(iv) removal from service; and

(v) dismissal from service.

(b) An order by the Governor on an appeal against an order imposing any of the penalties mentioned at (a) above.

(c) An order by the Governor imposing any of the penalties mentioned at (a) above, in exercise of his powers of review and in modification of an order under which none of the said penalties has been imposed; and

(d) An order by the Governor over-ruling or modifying, after consideration of any petitioner memorial or otherwise an order imposing any of the penalties mentioned at (a) above made by the Governor or by a subordinate authority.

10. Nothing contained in Regulation 9 shall be deemed to make it necessary for the Government to consult the Commission in any case in which the Commission has, at any previous stage, given advice in regard to the order to be passed and no fresh question has thereafter arisen for determination.

11. The Himachal Pradesh Public Service Commission (Exemption from Consultation) Regulations, 1971, as amended from time to time are hereby repealed.

#### SCHEDULE

Posts in respect of which the authority to appoint is specifically conferred on the President of India or on the Governor of Himachal Pradesh by the Constitution.

2. Posts of Chairman or Members of any Board, Tribunal, Commission, or other similar body created by or under the provisions of a Statute.

3. Posts of Chairman or Member of any Board, Tribunal, Commission, Committee or other similar body created or appointed by or under the authority of a Resolution of the House of Legislature or by Resolution of Government for the purpose of conducting any investigation or enquiry into or advising Government on specified matters.

4. Posts of the personal staff attached to the holders of the posts mentioned in items 1 to 3 above.

5. Posts in the Secretariat of the Vidhan Sabha.

6. Posts of officers and servants of the High Court till rules are issued by the Governor under article 229 of the Constitution.

7. Any post which is not whole time post.

8. Service or post carrying an initial pay of Rs. 299 or less per mensem.

9. Work-charged staff.

10. All Executive posts up to the rank of Inspector in the Police Department, when filled in by promotion.

11. Appointment of staff with requisite qualifications who have been in service for one year or more in the non-Governmental institutions already taken over or to be taken over in future by the Education Department.

12. Any service, or post, or class of posts in respect of which the Commission has agreed that it shall not be necessary for it to be consulted.

**EXTRACTS FROM FUNDAMENTAL AND SUPPLEMENTARY RULES**

**F.R. 13.** Unless his lien is suspended under rule 14 or transferred under rule 14-B, a Government servant holding substantively a permanent post retains a lien on that post:—

- (a) while performing the duties-of that post;
- (b) while on foreign service, or holding a temporary post, or officiating in another post;
- (c) during joining time on transfer to another post; unless he is transferred substantively to a post on lower pay; in which case his lien is transferred to the new post from the date on which he is relieved of his duties in the old post;
- (d) subject to the exception in sub--rule (2) of rule 97, while on leave other than refused leave granted after the date of compulsory retirement under rule 86 or corresponding other rules;
- (e) while under suspension.

**F.R. 23.** The holder of a post, the pay of which is changed, shall be treated as if he were transferred to a new post on the new pay; provided that he may at his option retain his old pay until the date on which, he had earned his next or any subsequent increment on the scale, or until he vacates his posts or ceases to draw pay on that time-scale. The option once exercised is final.

**F.R. 24.** An increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment, may be withheld from a Government servant by a local Government or by any authority to whom the local Government may delegate this power under rule 6 if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments.

**F.R. 28.** The authority which orders the transfer of a Government servant as a penalty from a higher to a lower grade or post may allow him to draw any pay, not exceeding the maximum of the lower grade or post, which it may think proper:

Provided that the pay allowed to be drawn by a Government servant under this rule shall not exceed the pay which he would have drawn by the operation of rule 22 read with clause (f) or clause (e), as the case may be, of rule 26.

**F.R. 29.** (1) If a Government servant is reduced as a measure of penalty to a lower stage in his time-scale, the authority ordering such reduction shall state the period for which it shall be effective and whether on restoration, the period of reduction shall operate to postpone further increments and, if so, to what extent.

(2) If a Government servant is reduced as a measure of penalty to a lower service, grade or post, or to a lower time-scale the authority ordering the reduction may or may not specify the period for which the reduction shall be effective; but where the period is specified, that authority shall also state whether, on restoration, the period of reduction shall operate to postpone further increments, and if so, to what extent.

**F.R. 29-A.** Where an order of penalty of withholding of increment of a Government servant or his reduction to a lower service, grade or post or to a lower time-scale, or to a over stage in a time-scale, is set aside or modified by a competent authority on appeal or review, the pay of the Government servant shall notwithstanding anything contained in these rules, be regulated in the following manner:—

- (a) if the said order is set aside, he shall be given, for the period such order has been in force, the difference between the pay to which he would have been entitled had that order not been made and the pay he had actually drawn;
- (b) if the said order is modified the pay shall be regulated as if the order as so modified had been made in the first instance.

*Explanation.*—If the pay drawn by a Government servant in respect, of any period prior to the issue of the orders of the competent authority under this rule is revised, the leave salary and allowances (other than travelling allowance) if any, admissible to him during the period shall be revised on the basis of the revised pay.

**F.R. 45-C.** For the purpose of rules 45-A and 45-B "emoluments" means:—

\* \* \* \* \*

- (yi) In the case of a Government servant under suspension and in receipt of a subsistence grant, the amount of the subsistence grant, provided that, if such Government servant is subsequently allowed to draw pay for the period of suspension the difference between the rent recovered on the basis of the subsistence grant and the rent due on the basis of the emoluments ultimately drawn shall be recovered from him.

It does not include allowances attached to the Victoria Cross, the Military Cross, the King's Police Medal, the Indian Police Medal, the Order of British India or the Indian Order of Merit.

**F.R 52.** The pay and allowances of a Government servant who is dismissed, or removed from service cease from the date of such dismissal, or removal.

**F.R 53.** (1) A Government servant under suspension shall be entitled to the following payments, namely:—

- (i) in the case of Commissioned Officer of the Indian Medical Department or a Warrant Officer in Civil Employee who is liable to revert to Military duty; the pay and allowances to which he would have been entitled had he been suspended while in Military employment;
- (ii) in the case of any other Government servant—
  - (a) a subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn if he had been on leave on half average pay or on half pay and in addition, dearness allowance, if admissible on the basis of such leave salary;

Provided that where the period of suspension exceeds twelve months, the authority, which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for- any period subsequent to the period of the first twelve months as follows:—

- (i) the amount of subsistence allowance may be increased by a suitable amount; not exceeding 50 per cent of the subsistence allowance admissible during the period of the first twelve months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant;
- (ii) the amount of subsistence allowance may be reduced by a suitable amount, not exceeding 50% of the subsistence allowance admissible during the period of the first twelve months, if in the opinion of the said authority, the period of suspension has been prolonged due to the reasons to be recorded in writing directly attributable to the Government servant;
- (iii) the rate of dearness allowance will be based on the increased or, as the case may be, the decreased amount of subsistence allowance admissible under sub clauses( i) and (ii) above;
- (b) any other compensatory allowances admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension subject to the fulfillment of other conditions laid down for the drawl of such allowances.

(2) No payment under sub-rule (1) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation:

Provided that in the case of a Government servant dismissed, removed or compulsorily retired from service, who is deemed to have been placed or to continue to be under suspension from the date of such dismissal or removal or compulsory retirement, under sub-rule (3) or sub-rule (4) of rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to continue to be under suspension, he shall be entitled to the subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods as the case may be, fall short of the amount of subsistence allowance and other allowances that would otherwise be admissible to him; where the subsistence allowance and other allowances admissible to him are equal to or less than the amount earned by him, nothing in this proviso shall apply to him.

**F.R. 54.** (1) When a Government servant who has been dismissed, removed or compulsorily retired is re-instated as a result of appeal or review or would have been so re-instated but for his retirement on superannuation while under suspension preceding the dismissal, removal or compulsorily retirement, the authority competent to order re-instatement shall consider and make a specific order—

- (a) regarding the pay and allowances to be paid to the Government servant for the "period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and
- (b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order re-instatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7) be paid for the period of such delay, only such proportion of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule (2) including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (2) of article 311 of the Constitution and no further inquiry is proposed to be held, the Government servant shall, subject to the provisions of sub-rules (6) and (7), be paid such proportion of the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as total case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum- proposed and after considering the representation, if any, submits in the notice:

Provided that any payment under this sub-rule shall be restricted to a period of three years immediately preceding re-instatement or retirement on superannuation, as the case may be.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specific purpose:

Provided that if the Government servant so desires such authority may direct that th period of absence from duty including the period of suspension preceding his dismissal, remove or compulsory retirement, as the case may be, shall be converted into leave of any kind due am admissible to the Government servant.

*Note.*—The order of the competent authority under the preceding proviso shall be absolute and

no higher sanction shall be necessary for the grant of—

- (a) extraordinary leave in excess of five years in the case of temporary Government servant: and
- (6) leave of any kind in excess of five years in the case of permanent Government servant.

(6) The payment of allowances under sub-rule (2) or sub-rule (4) shall be subject to al other conditions under which such allowances are admissible.

(7) The proportion of the full pay and allowances determined under the proviso to sub rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under rule 53.

(8) Any payment made under this rule to a Government servant on his re-instatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of re-instatement. Where the emoluments admissible under the rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the Government servant.

**F.R. 54-A.** (1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a court of law and such Government servant is re-instated without holding any further inquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court.

(2) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the court solely on the ground of non-compliance with the requirements of clause (2) of article 31 i of the Constitution, and where he is not exonerated on merits, the pay and allowances' to be paid to the Government servant for the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of re-instatement shall be determined by the competent authority and the said period shall be regularised, in accordance with the provisions contained in sub-rules (4), (5) and (7) of rule 54.

(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the court on the merit 'of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of re-instatement shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowance are admissible.

(5) Any payment made under this rule to a Government servant on his re-instatement shall be subject to a adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this r u le are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant.

**F.R. 54-B.** (1) When a Government servant who has been suspended is re-instated or would have been so re-instated but for his retirement on superannuation while under suspension the authority competent to order re-instatement shall consider and make a specific order—

- (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with re-instatement or the date of his retirement on superannuation, as the case may be; and
- (b) whether or not the said period shall be treated as a period spent on duty,,

(2) Notwithstanding anything contained in rule 53, where a Government 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 suspended subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order re-instatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such proportion of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3), the Government servant shall subject to the provisions of sub-rules (8) and (9) be paid such proportion of the full pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed after considering the representation, if any, submitted by him in that connection within such period as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary or court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be.

(7) In a case falling under sub-rule (5) the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government. servant so desires such authority may order that the period of suspension shall be converted into leave of any kind du e and admissible to Government servant.

*Nate.*—The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of—

- (a) extraordinary leave in excess of three months in the case of temporary Government servant; and
- (b) leave of any kind in excess of five years in the case of temporary quasi-permanent Government servant.

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The proportion of the full pay and allowances determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under rule 53.

**F.R. 55.** Leave may not be granted to a Government servant under suspension.

**S.R. 153-A.** A Government servant under suspension who is required to perform journey to attend the departmental enquiry (other than Police enquiry) may be allowed travelling allowance as for a journey on tour from his headquarters to the place where the departmental enquiry is held or from the place at which he has been permitted to reside during suspension to the place of enquiry whichever is less. No travelling allowance will, however, be admissible if there query is held at the out-station at his own request.

**S.R. 154.** The following provisions apply to a Government servant who is summoned to give evidence—

- (a) ii a criminal case, a case before a court-martial, a civil case to which Government is a party or a departmental inquiry held by a properly constituted authority.

**S.R. 155.** A Government servant summoned to give evidence in circumstances other than those described in rule 154 or to serve as an assessor or juror in court of law is not entitled, by reason of his position as Government servant, to any payments other than those admissible by the rules of the court, if the court pays him any sum as subsistence allowance or compensation, apart from payment for travelling expenses, he must credit that sum to Government before drawing full pay for the days of absence.

**S.R. 190.** (a) When, any person, not being a Government servant, is required to attend any meeting of a commission of inquiry or of a board, conference, committee or departmental inquiry convened under proper authority, or is required to perform any public duties in any honorary capacity, a competent authority may grant him travelling allowance for the journey calculated under the ordinary rules for the journey of a Government servant on tour; and for this purpose may, with due regard to such person's position in life, declare by general or special order, the grade to which he shall be considered to belong.

(b) In a case of the kind contemplated by clause (a) of this rule, a competent authority may, in its discretion, grant to the person concerned his actual travelling, hotel and carriage expenses instead of travelling allowance under that clause; if it considers that such allowance would be inadequate.

(c) A competent authority may delegate the power conferred upon it by clause (</) of this rule to the Government servant presiding over the meeting of the commission or other body which the person concerned is required to attend.

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**THE HIMACHAL PRADESH DEPARTMENTAL ENQUIRIES (POWERS) ACT, 1973**

(ACT NO. 25 OF 1973)

AN

**ACT**

*to provide for the enforcement of attendance of witnesses and production of documents in departmental inquiries and for matters connected therewith or incidental thereto.*

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Twenty-fourth Year of the Republic of India as follows:—

**1. Short title, extent and commencement:**

(1) This Act may be called the Himachal Pradesh Departmental Enquiries (Powers) Act, - 1973.

(2) It shall extend to the whole of Himachal Pradesh.

(3) It shall come into *force* at once.

**2. Definition:**

For the purposes of this Act, "departmental inquiry" means any inquiry held under and in accordance with—

(i) any law or any rule made there under, or

(ii) any rule made under the proviso to Article 309, or continued under Article 313, of the Constitution of India.

**3. Summoning of witnesses and production of documents:**

For the purposes of a departmental inquiry in Himachal Pradesh, the officer conducting such an enquiry shall be competent to exercise the same powers for the summoning of witnesses and for compelling the production of documents as are exercisable by a Commissioner appointed for an enquiry under the Public Servants (Inquiries) Act, 1850 (37 of 1850) and all persons disobeying any process issued by such officer in this behalf shall be liable to the same penalties as if the same had issued from a Court.

**4. Repeal and savings:**

The Punjab Departmental Enquiries (Powers) Act, 1955, as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organization Act, 1966 (31 of 1966) is hereby repealed:

Provided that anything done or any action taken under the said Act shall be deemed to have been done or taken under this Act.

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**THE PUBLIC SERVANTS (INQUIRIES) ACT, 1850**

(37 OF 1850)

**Section 8:****Powers of commissioner - their Protection-Service of their process—Powers of Court etc., acting under Commission:**

The Commissioners shall have the same power of punishing contempt's and obstructions to their proceedings, as is given to Civil and Criminal Courts by (the Code of Criminal Procedure, 1898), and shall have the same powers for the summons of witnesses, and for compelling the production of documents, and for the discharge of their duty under the commission, and shall be entitled to the same protection as the Zila and City Judges, except that all process to cause the attendance of witnesses or other compulsory process, shall be served through and executed by the Zila, or City Judge in whose jurisdiction the witness or other person resides, on whom the process is to be served, and if he resides within Calcutta, Madras or Bombay, then through the Supreme Court of Judicature thereto. When the commission has been issued to a Court, or other person or persons having power to issue such process in the exercise of their ordinary authority, they may also use all such power for the purposes of the commission.

**Section 9:****Penalty for disobedience to process:**

All persons disobeying any lawful process issued as aforesaid for the purposes of the commission shall be liable to the same penalties as if the same had issued originally from the Court or other authority through whom it is executed.

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**APPENDIX-II  
FORMS**

**STANDARD FORM OF MEMORANDUM OF CHARGES FOR IMPOSING MINOR  
PENALTIES [RULE 16 OF THE CCS. (CCA.) RULES, 1965]**

No ....., .....

**GOVERNMENT OF HIMACHAL PRADESH**

**Office of .....**

**MEMORANDUM**

*Dated.....*

Shri.....(Designation)..... (office in which working) is hereby informed that it is proposed to take action against him under rule 16ofC.CS.(C.C.A.) Rules, !%5. A statement of the imputations of misconduct or misbehaviour on which action is proposed to be taken as mentioned above, is enclosed.

2. Shri.....'is hereby given an opportunity to make such representation as he may wish to make against the proposal.

3. If Shri.....fails to submit his representation within 10 days of the receipt of this Memorandum, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri: *x parte*.

4. The receipt of this Memorandum should be acknowledged by Shri.....

\*(By order and in the name of the Governor).

*Signature.....*

*Name and designation of competent authority.*

(To be signed by an officer in the appropriate Administrative Department authorised under article 166 of the Constitution to authenticate orders on behalf of the Governor or by the appointing authority, as the case may be).

To  
Shri .....

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\* Where the Governor is the disciplinary authority.

STANDARD FORM OF MEMORANDUM OF CHARGES FOR IMPOSING MAJOR PENALTIES (RULE 14 OF THE C.C.S. (C.C.A.) RULES, 1965

No. OF HIMACHAL PRADESH Office of .....

MEMORANDUM

Dated.....

The Governor/undersigned proposes to hold an inquiry against Shri..... under rule 1.4 of the Central Civil Services(Classification, Control and Appeal) Rules, 1965. The substance of the imputation of misconduct or mis-behaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure II). A list of witnesses by whom, and a list of documents by which the articles of charge are proposed to be sustained are also enclosed (Annexure III and IV).

2. Shri..... is directed to submit within 10 days of the receipt of this memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Shri..... is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 or the orders/directions issued in pursuance of the said rule," the inquiring authority may hold the inquiry against him ex parte.

5. Attention of Shri..... is invited to rule 20 of the Central Civil Services (Conduct) Rules, 1964 under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings, It will be presumed that Shri..... is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of rule 20 of the CCS. (Conduct) Rules, 1964.

6. The receipt of this Memorandum may be acknowledged.

\*(By order and in the name of the Governor).

..... Signature Name and designation of competent authority.

(To be signed by an officer in the appropriate Administrative Department authorised under Article 166 of the Constitution to authenticate orders on behalf of the Governor or by the appointing authority, as the case may be).

\* Where the Governor is the disciplinary authority.

To Shri .....

ANNEXUR I

Statement of articles of charge framed against Shri..... (name and designation of the Government servant):—

Article I

That the said Shri ..... while functioning as .....during the period.....'

Article II'

That during the aforesaid period and while functioning in the aforesaid office, the said Shri..... ,

Article III

That durina the aforesaid period and while functioning in the aforesaid office the said Shri-----

ANNEXURE II

Statement of imputations of misconduct or mis-behaviour in support of the articles of charge framed against Shri (name and designation of the Government servant).

Article I

Article II

Article III

ANNEXURE III

LIST OF WITNESSES

ANNEXURE IV

LIST OF DOCUMENTS

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STANDARD FORM OF ORDER RELATING TO APPOINTMENT OF INQUIRY OFFICER [RULE 14 (2) OF CCS. (C.C. & A.) RULES, 1965)

No GOVERNMENTOF HIMACHAL PRADESH Office of .....

ORDER

(Place of issue).....dated.....

Whereas an inquiry under rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, is being held against.....(name and designation of the Government servant).

And' whereas the Governor /undersigned considers that an Inquiry Officer should be appointed to inquire into the charges framed against him.

Now, therefore, the Governor/undersigned, in exercise of the powers conferred by sub-rule (2)'of the said rule, hereby appoints Shri (name and designation of the Inquiry Officer) as inquiry Officer to inquire into t he charges framed against the said Shri..... ^....

\*(By order and in the name of the Governor).

Signature.....

Name and designation of the competent authority,

(To be signed by an officer in the appropriate Administrative Department 177authorized under article 166 of the Constitution to authenticate orders on behalf of the Governor or by the appointing authority, as the case may be).

Copy to ..... (name and designation' of the Government servant);

Copy to ..... (name and designation of the Inquiry Officer);

Copy to ..... (name and designation of the lending authority);  
for information.

Copy to ..... (name and designation of the Presenting Officer).

Copy to the Director of Vigilance.

\* Where the Governor is the disciplinary authority.

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STANDARD FORM OF ORDER RELATING TO APPOINTMENT OF PRESENTING OFFICER [RULE 14 (5) (c) OF  
CCS. (C.C.&A.) RULES, . 1965]

No.....

GOVERNMENT OF HIMACHAL 'PRADESH

Office of.....

**ORDER**

(Place of issue) \_\_\_ .....dated .....

Whereas an enquiry under rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, is being held against.....(name and designation of the Government servant).

And whereas the Governor/undersigned considers that a Government servant may be appointed as the Presenting Officer to present on its behalf the case in support of the articles of charge before the Inquiry Officer.

Now, therefore, the Governor/undersigned, in exercise of the powers conferred by sub-rule (5)(c) of the said rule, hereby appoints Shri. ....(name and designation of the Presenting Officer) as Presenting Officer to present the case on its behalf before the Inquiry Officer.

\*(By order and in the name of the Governor).

Signature....., .....

Name and designation of competent authority.

\* Where the Governor is the disciplinary authority.

(To be signed by the officer in the appropriate Administrative Department authorised under article 166 of the Constitution to authenticate orders on behalf of the Governor or by the appointing authority, as the case may be).

Shri .....

STANDARD FORM OF ORDER FOR TAKING DISCIPLINARY ACTION IN COMMON PROCEEDINGS [RULE 18 OF  
CCS. (CC.&A.) RULES, 1965]

No.....

GOVERNMENT OF HIMACHAL- PRADESH

Office of.....

**ORDER**

Dated..... \_\_\_ .....

Names of the Government servants..... \_\_\_\_\_ ....., .....

Whereas the Government servants specified in the margin are jointly concerned in disciplinary cases.

\*Now, therefore, in exercise of the powers conferred by sub-rules (1) and (2) of rule 18 of the Central Civil Service (CCA.) Rules, 1965, the Governor hereby directs:

(1) that disciplinary action against all the said Government servants shall be taken in a common proceedings,

\*\* (2) that..... (name and designation of the authority) shall function as the Disciplinary Authority for the purpose of the common proceedings and shall be competent to impose the following penalties, namely:—

(HERE SPECIFY THE PENALTIES)

\*\*\* (3) that the procedure prescribed @ in rules 14 and 15, rule 16 shall be followed in the said proceedings.

©(Score out the portion not applicable).

(By order and in the name of the Governor).

Signature.....

Name and designation of the competent authority,

[To be signed by an officer in the appropriate department authorised under Article 166 of the Constitution to authenticate orders on behalf of the Governor, or other competent authority under rule 18 (1) as the case may be].

Copy to—

1. Shri (Name and designation).
2. Shri .(Name and designation).
3. Shri \_\_\_\_\_ (Name and designation).

The authority competent to impose the penalty of dismissal from service on all such Government servants or if they are different, the highest of such authorities with the consent of others [See rule 18(1)]. \*\**Seenx'«i* 18(2)(<). @*See* rule 18(2)07). \*\*\*5ee rule 18(2j(/'i7).

Where the order is expressed to be made in the name of the Governor,

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STANDARD FORM FOR ISSUE OF SHOW-CAUSE NOTICE—FORM NO. I. [Rule 15 (4) of CCS. (C.C.&A.) Rules, 1965]

No.....

**GOVERNMENT OF HIMACHAL PRADESH**

Office of.....

**MEMORANDUM**

Place of issue ..... Dated .....

The undersigned is directed to enclose a copy of the inquiry report submitted by the officer appointed to inquire into the charges against Shri..... (name, designation and office of the Government servant in which he is employed) (\* under suspension).

\*Only in cases where applicable.

2. On a careful consideration of the inquiry report aforesaid, the Governor/undersigned agrees with the findings of the Inquiry Officer and holds that the article (s) of charge is/are proved. The Governor/The undersigned has, therefore, provisionally come to the conclusion that Shri. is not a fit person to be retained in service and so the Governor/the undersigned proposes to impose on him the penalty of dismissal from service/removal from service/compulsory retirement.

OR

Shri; ..... (name of Government servant) is not a fit person to be retained as (name of post) in the timescale of pay of Rs..... in the grade of..... (name of grade)/in grade of..... the (name of service) as., (name of post held by the Government servant), in the., service (name of service) and so the Governor/the undersigned proposes to impose on him the penalty of reduction to the post of (name of post) in the time-scale of pay of Rs ..... the grade of (name of grade)/grade of the .(name of service) the post of (name of post to which reduced), the..... service (name of service to which reduced).

OR

The penalty of reduction to the lower stage at Rs.....in the time scale of pay of Rs..... may be imposed on Shri ..... for a period of. .... (here state the period).

3, Shri.....(name of the Government servant) is hereby given an opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during the inquiry. Any representation which he may wish to make on the penalty proposed will be considered by the Governor/the undersigned. Such representation, if any, should be made in writing and submitted so as to reach the under signed not later than fifteen days from the date of receipt of this Memorandum by Shri. .Y.....: ..... (name of the Government servant).

4. The receipt of this Memorandum should be acknowledged.

@(By order and in the name of the Governor).

*Name and designation of the competent authority.*

(To be signed by an officer in the appropriate department authorised under Article 166 of the Constitution to authenticate orders on behalf of the Governor or by the disciplinary authority, as the case may be).

(name, designation and office of the Government servant). ©Where the Governor is the disciplinary authority.

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**STANDARD FORM FOR ISSUE OF SHOW-CAUSE NOTICE—FORM NO. II [Rule 15(4) (ii) of CCS. (C.C.&A.) Rules, 1965]**

To

GOVERNMENT OF HIMACHAL PRADESH  
Office of .....

**MEMORANDUM**

Place of issue..... Dated .....

The undersigned is directed to enclose a copy of the inquiry report on each article of charge submitted by the officer appointed to inquire into the charges against Shri..... (name, designation and office of the Government servant in' which he is employed) (\*under suspension).

2. On a careful consideration of the inquiry report aforesaid, the Governor/the undersigned agrees with the findings of the Inquiry Officer in so far as it relates to article(\*) of charge No.(s), and for reasons stated in the attached Memorandum holds that article(s) of charge No.(s) -which the Inquiry Officer has held as not proved/nroved is also proved/not proved. The Governor/the undersigned has, therefore, provisionally come to the conclusion that Shri.....is not a fit person to be retained in service and so the Governor/the undersigned proposes to impose on him the penalty of dismissal from service/removal from service/compulsory retirement.

OR

Shri.....(name of Government servant) is not a fit person to be retained as ..... (name of post) in the time-scale of pay Rs..... in the grade..... of of the.....(name of name of post held by the Governemnt servant) in the .....service (the name of service) and so the the Government /the undersigned perposes to impose on him the penalty of reduction to the post of.....(name post) in the timescale of pay Rs.....the grade of.....(name of grade) grade.....of the .....(name of service) the post of.....(name of post to which reduced), the.....service (name of service to which reduced), the penalty of reduction to the ;pwer stage at Rs.....in the time-scale of pay of Rs.....may be imposed on Shri.....for a period of.....(here . staten the period).

\*Only in cases where applicable. (name of service) as.....(name of post held by the Government servant) in the service (name of service), and so the Governor/the undersigned proposes to impose on him the penalty of ev iction to the post of..... (nam i oi post) i - tl e ti ne scale of pay of Rs..... the grade of (name of grade)/grade , .of the (name of service) the post of (name of post" to which reduced), the. service (name of service to which reduced), the penalty of reduction to the lower stage at Rs in the time-scale of pay of Rs ;".\*\*' "may be imposed on Shri.....for aperiod of .(here state the period).

3. ....Shri..... — .(name of the Government servant) is hereby given an opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during the inquiry. Any representation which he may wish to make on the penalty proposed will be considered by the Governor/the undersigned. Such representation, if any, should be made in writing and submitted so as to reach the u undersigned not later than fifteen days from the date of receipt of this Memorandum by Shri (name of the Government servant).

4. The receipt of this Memorandum should be acknowledged.

@(By order and in the name of the Governor).

*Name and designation of the competent authority.*

(To be signed by an officer in the appropriate .department authorised under Article 166 of the Constitution to authenticate orders on behalf of the Governor or by the disciplinary authority, as the case may be).

**To**

(Name, designation and office of the Government servant).

©Where the Governor is the disciplinary authority.

SANCTION ORDER TO BE ISSUED BY THE STATE GOVERNMENT  
{See section 6 of the P.C. Act, 1947 and section 197 of the Code of Criminal Procedure, 1973)  
No.....  
GOVERNMENT OF HTMACHAL PRADESH  
Office of

ORDER

*Dated, Simla, the . . . . . 19 .*

Whereas it is alleged that Shri .....(here enter the name of the offender), while functioning as ..... ---- .....(here enter the post held by the offender at the time of the offence), on or about (here enter the date of offence) day of .... 19..... .

\*

And whereas the said acts constitute an offence/offences punishable under section/sections..... of the Indian Penal Code, 1860 (Act 45 of 1860)/section 5(2) read with section 5(1) (here enter the appropriate clause) of the Prevention of Corruption Act, 1947 (Act II of 1947);

And whereas State Government, after fully and carefully examining the material before it in regard to the said allegations and the circumstances of the case, considers that the said Shri-..... (here enter the name of the offender) should be prosecuted in a court of law for the said offence/offences;

Now, therefore, the State Government does hereby accord sanction under section 397 of the Code of Criminal Procedure, 1898 (Act V of 1898)1 and/or section 6 (1)(a) of the Prevention of Corruption Act, 1947 (II of 1947), for the prosecution of the said Shri .....(here enter the name of the offender) for the said offence/offences and any other offences punishable under other provisions of law in respect of the acts aforesaid and for the taking of cognizance of the said offence by a court of competent jurisdiction.

By order and in the name of the Governor. *Name and designation of the competent authority.*

(To be signed by an officer authorised under Article 166 of the Constitution to authenticate orders on behalf of the Governor.) of the offence) cm or about (here enter the date of offence) day of 19

'Description of the acts constituting offences and also the place of commission of the offence.

And whereas the said acts constitute an offence/offences punishable under section/sections of the indian Penal Code, 1860 (Act 45 of 1860) section 5 (2) read with section 5(1) (here enter the appropriate clause) of the Prevention of Corruption Act, 1947 (Act II of 1947).

. And whereas, I,..... (here enter the name and designation of the sanctioning authority), being the authority competent to remove the said Shri..... (here enter the name of the offender) from office, after fully and carefully examining the material before me in regard to the said allegations and the circumstances of the case, consider that the said Shri. ....(here enter the name of the offender) should be prosecuted in a court of law for the said offence/offences.

Now, therefore, I do hereby accord sanction under 6 (1)(c) of the Prevention of <sup>1</sup> Corruption Act, 1947 (Act II of 1947) for the prosecution of the said Shri.....(here enter the name of the offender) for the said offence/offences and any other offences punishable under other provisions of law in respect of the acts aforesaid and for the taking of cognizance of the said offences by a court of competent jurisdiction.

*Signature and designation of the authority competent to remove the offender.*

\*Description of the acts constituting offences and also thQ place of commission of the offence.

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SANCTION ORDER TO BE ISSUED IB Y THE AUTHORITY COMPETENT TO REMOVE THE ACCUSED FROM OFFICE

[See section 6 of the Prevention of Corruption Act (Act No. II of 1947)]

No.....  
GOVERNMENT OF HIMACHAL PRADESH Office of.....  
ORDER

*Dated, the.....*

Whereas it is alleged that Shri.....(here enter the name of the offender), while functioning as (here enter the post held by the offender at the time

STANDARD FORM UNDER RULE 10 (2) OF CCS. (C.C.&A-) RULES, 1965

No.....

GOVERNMENT OF HIMACHAL PRADESH

Office of.....

ORDER

*Dated* .....

Whereas a case against Shri..... (name and designation of the Government Servant), in respect of a criminal offence is under investigation.

And whereas, the said Shri .....was detained in custody on ..... for a period exceeding forty-eight hours.....

Now, therefore, the said Shri. ....with effect from the date of detention, *i.e.*, the is deemed to have been suspended ..... in terms of sub-rule (2) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and shall remain under suspension until further orders.

\*(By order and in the name of the Governor).

*Name and designation of the competent authority.*

(To be signed by an officer of the Appropriate Administrative Department authorised under Article 166 of the Constitution to authenticate orders on behalf of the Governor or by the appointing authority as the case may be).

---

<sup>2</sup>Where the order is expressed to be made in the name of Governor.

1. Copy to Shri ..... (name and designation of the suspended ) Copy to shri

\*Where the order is expressed to be made in the name of the Governor.

STANDARD FORM OF ORDER OF SUSPENSION

It is further ordered that during the period that this order shall remain in force the head quarters of Shri (name and designation of Government servant) shall be..... (name of the place) and the said Shri shall not leave the headquarters without obtaining the previous permission of the undersigned

\*(By order and in the name of the Governor).

Signature.....

Name and designation of the suspending authority.

(To be signed by the officer in the appropriate department authorised under Article 166 of the Constitution to authenticate orders on behalf of the Governor or by the other competent officer passing the order, as the case may be).

[Rule 10(1) of the CCS. (C.C.&A.) Rules, 1965]

No

GOVERNMENT OF HIMACHAL PRADESH

Office of .....

ORDER

Place of issue ..... >..... Dated .....

Whereas a disciplinary proceeding against ..... Whereas a case against Shri..... Shri (name and designation (name and designation of the Government of the Government servant) is contemplated/ ..... servant) in respect of a criminal offence is under pending. .... investigation/inquiry/trial.

Now, therefore, the Governor/the undersigned (the appointing authority or any authority to Which it is subordinate or any other authority

.....(name and designation of the suspended officer).Orders regarding subsistence allowance admissible to him during the period of his suspension will issue separately.

2. Copy to Shri..... (name and designation of the Appointing authority) for information.

3. Copy to Shri ..... (name and designation of the lending authority) for information.

4. The circumstances in which the order of suspension was made are as follows:—

(Here give details of the case and reasons for suspension).

\*

*Note.*—Paras 2 to 4 should not be inserted in the copy of the order of suspension sent to the officer to be suspended.

STANDARD FORM OF ORDER FOR REVOCATION OF SUSPENSION ORDER [Rule 10 (5) (c) of CCS. (C.C & A.)  
Rules, 1965]

No .....

GOVERNMENT OF HIMACHAL PRADESH

Office of.....

ORDER

Place of issue ..... Dated.....

Whereas an order placing Shri ..... (name and designation of the Government servant) under suspension was made/was deemed to have been made by.....

Now, therefore, the Governor/undersigned (the authority which made or is deemed to have made the order of suspension or any authority to which that authority is subordinate) in exercise of the powers conferred by clause (c) of sub-rule (5) of rule 10 of the Central Civil Services (Classification; Control and Appeal) Rules, 1965, hereby revokes the said order of suspension with immediate effect.

\*(By order and in the name of the Governor).

*Signature*.....

*Name and designation of the authority making the order.*

[To be signed by an officer in the appropriate Administrative Department authorised under Article 166 of the Constitution to authenticate orders on behalf of the Governor or by authority competent to pass an order under rule 10 (5) (c) of the rules, as the case may be].

1 • Copy to Shri ..... (name and designation of the suspended officer).

2. Copy to Shri ..... (name and designation of the appointing authority) for information.

"Where the order is expressed to be made in the name of the Governor.

3. Copy to Shri ..... (name and designation of the lending authority) for information.

4. Copy to Shri ..... (name and designation of the authority making the order of suspension).

5. The reasons for revoking the order of suspension are as follows:—

(Here give in brief the reasons).

*Note 1.*—Endorsement as in para 2 should be made where the order of revocation of suspension is made by an authority lower than the appointing authority.

*Note 2.*—Endorsement as in para 3 should be made where the order of suspension has been made against a "Borrowed Officer".

*Note 3.*—Endorsement as in para 4 should be made where the order of revocation of suspension is made by an authority other than the authority which made or is deemed to have made the order of suspension.

*Note 4.*—Para 5 should be inserted only if an endorsement as in para 2, 3 or 4 is made.

*Note 5.*—Paras 2 to 5 should not be inserted in the copy sent to the suspended officer.

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STANDARD FORM OF CERTIFICATE TO BE FURNISHED BY SUSPENDED OFFICIAL  
UNDER F. R. 53 (2)

I,..... (name of the Government servant), having been placed under suspension by order dated while holding the post of do hereby certify that I have not been employed in any business, profession or vocation for profit/remuneration/salary.

Signature .....  
(Name of the Government servant).

Address .....

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STANDARD FORM OF SANCTION UNDER RULE 9 OF THE CCS. (PENSION) RULES, 1972

No.....  
GOVERNMENT OF HIMACHAL PRADESH  
Office of .....

ORDER

*Dated the*.....

Whereas it has been made to appear that Shri .....while serving as..... in the Department from .....to was .....(here specify briefly the imputations of misconduct or misbehaviour in respect of which it is proposed to institute departmental proceedings).

Now, therefore, in exercise of the powers conferred on him by Rule 9 of the CCS. (Pension) Rules, 1972, the Governor, hereby accords sanction to the institution of departmental proceedings against the said Shri.....

The Governor further directs that the said departmental proceedings shall be conducted in accordance with the procedure laid down in rules 14 and 15 of the CCS. (C.C. & A.) Rules-, 1965 by ..... (here specify the authority by whom the departmental proceedings should be conducted). ..... at (hereby specify the place at which the departmental proceedings would be conducted).

By order and in the name of the Governor.

*Name and designation of the competent authority.*

(To be signed by an officer in the appropriate department authorised under Article 166 of the Constitution to a ■<sup>1</sup>henticate orders on behalf of the Governor).

No .....

Dated .....

Copy forwarded to Shri..... \_\_\_\_

Copy also forwarded to Shri .....

----

STANDARD FORM OF CHAR AGE-SHEET FOR PROCEEDINGS UNDER RULE 9 OF THE CCS. (PENSION) RULES, 1972

No. ....

GOVERNMENT OF HI MAC HAL PRADESH

Office of.....

MEMORANDUM

Dated the.....

In pursuance of the sanction accorded by the Government under Rule 9 of the CCS. (Pension) Rules, 1972 for instituting departmental proceedings against Shri..... vide Department of order No ..... dated it is proposed to hold an inquiry against the said Shri..... in accordance with the procedure laid down in rules Wand 15 of the CCS. (C.C. & A.) Rules, 1965.The inquiry shall be conducted by (here specify the authority by whom the depart mental proceedings are to be ^conducted) in accordance |with the sanction of the Governor at ..... (here specify the name of the place where proceedings are to be conducted).

2. The substance of the imputations of mis-conduct or mis-behaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I) A statement of the imputations of mis-conduct or mis-behaviour in support of each article of chargeis enclosed (Annexure II). A list of witnesses by whom, and a list of documents by which the articles of charge are proposed to be sustained are also enclosed (Annexure III and IV).

3. Shri..... is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

4. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

5. Shri.....is further informed that if he does not submit his written statement or defence on or before the date specified in para 3 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of rulesl4 and 15 of the CCS. (CC. & A.) Rules, 1965, or the orders/directions issued in pursuance of the said rules, the inquiring authority may hold the inquiry against him *ex parte*.

6. The receipt of this memorandum may be acknowledged.

By order and in the name of the Governor. *Name and designation of the competent authority.*

(To be signed by an officei in the appropriate Department authorised under Article 166 of the Constitution to authenticate orders on behalf of the Governor).

To  
Shri .....

ANNEXURE I

Statement of articles of charge framed against Shri..... (name of the retired

Government servant) formerly.....

Article I

That the said Shri ..... while functioning as..... during the period .....

Article II

That during the aforesaid period and while functioning in the aforesaid office the said Shri..... ..'

Article III

That during the aforesaid period and while functioning in the aforesaid office that the said Shri .....

ANNEXURE II

Statement of imputations of misconduct or mis-behaviour in support of the articles of charge framed against Shri .....(name of the retired Government servant) formerly-----

Article I

Article II

Article III

ANNEXURE III

List of witnesses by whom the articles of charge framed against Shri ..... (name of the retired Government servant) formerly ..... are proposed to be sustained.

ANNEXURE IV

List of documents by which the articles of charge framed against Shri..... (name of retired Government servant) formerly ..... are proposed to be sustained.

NOTICE OF TERMINATION OF SERVICE ISSUED UNDER RULE 5 (1) OF THE CENTRAL CIVIL SERVICES (TEMPORARY SERVICE) RULES, 1965

GOVERNMENT OF HIMACHAL PRADESH

Office of .....

Dated.....

In pursuance of sub-rule( 1) of rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, the Governor of Himachal Pradesh/the undersigned hereby gives notice to Shri .....(name), that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be, tendered to him.

\* (By order and in the name of the Governor).

*Name and designation of the Competent Authority.*

(To be signed by an officer of the appropriate Administrative Department competent to authenticate orders on behalf of the Governor or by the appointing authority, as the case may be). \* Where the order is expressed to be made in the name of the Governor^

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**ORDER OF TERMINATION OF SERVICE ISSUED UNDER THE PROVISIO TO SUB-RULE (I) OF RULE 5 OF THE CENTRAL CIVIL SERVICES (TEMPORARY SEFVICE) RULES, 1965**

GOVERNMENT OF HIMACHAL PRADESH

Office of.....

In pursuance of the proviso to sub-rule (1) of rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, the Governor of Himachal Pradesh/the undersigned hereby terminate forthwith the services of Shri (name) and directs that he shall be paid a sum equivalent to the amount of pay and allowances for a period of one month (in lieu of the period of notice) calculated at the same rate at which he was drawing them immediately before the date on which this order is served on or, as the case may be, tendered to him. (3By order and in the name of the Governor).

*Name and designation of the Competent Authority.*

(To be signed by an officer of the appropriate Administrative Department competent to authenticate orders on behalf of the Governor or by the appointing authority, as the case may be).

Station.....

Date.....

\*Where the order is expressed to be made in the name of the Governor.

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**ORDER OF TERMINATION OF SERVICE ISSUED UNDER PROVISIO TO SUB-RULE (!) OF RULE 5 OF CCS. (T.S.) RULES. 1965, DURING THE CURRENCY OF THE NOTICE OF TERMINATION OF SERVICES ALREADY SERVED ON HIM**

GOVERNMENT OF HIMACHAL PRADESH

Office of

In modification of Notice No.....dated.....of termination of service of Shri (Name) and in pursuance of the proviso to sub-rule (I) of rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. the Governor/under-signed hereby terminate forthwith the services of Shri.....(Name) and directs that he shall be paid a sum equivalent to the amount of pay and allowances for the period by which the said notice falls short of one month calculated at the same rates at which he was drawing them immediately before the date of this order.

\*(By order and in the name of the Governor).

\_\_\_\_\_  
the order is expressed to be made In the name of the Governor..

*Name and designation of the Competent Authority.*

(To be signed by an officer of the appropriate Administrative Department competent to authenticate orders on behalf of the Governor or by the appointing authority, as the case may be).

Station.....

Date.....

-----

**STANDARD FORM IMPOSING THE PENALTY OF DISMISSAL/REMOVAL/ COMPULSORY RETIREMENT IN  
CASES OF CONVICTION BY A COURT  
OF LAW  
GOVERNMENT OF HIMACHAL PRADESH**

Office of.....

ORDER

*Dated.*

Whereas Shri.....(here enter name and designation of the Government servant) has been convicted on a criminal charge, to wit, under section.....(here enter the section or sections under which the Government servant was convicted) of.....(here enter the name of the statute concerned).

And whereas it is considered that the conduct of the said Shri.....(here enter name and designation of the Government servant) which has led to his conviction is such as to render his further retention in the public service undesirable.

Now, therefore, in exercise of the powers conferred by rule 19 (i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the Governor in consultation with the H.P. Public Service Commission hereby dismisses/removes the said Shri(here enter name and designation of the Government servant) from service, or directs that the said Shri ... (here enter the name and designation of the Government servant) shall be compulsorily retired from service with effect from (here enter the date of dismissal/removal/ compulsory retirement).

\*(By order and in the name of the Governor).

*Name and designation of the Competent Authority.*

(To be signed by an officer in the appropriate Administrative Department authorised under Article 166 of the Constitution to authenticate orders on behalf of the Governor or by the appointing authority as the case may be).

◆Where the order is expressed to be made in the name of the Governor. *N.B.*—In the above form, portions not required should be struck out according to the circumstances of each case.

**STANDARD FORM FOR INITIATION OF DEPARTMENTAL PROCEEDINGS WHEN THE ACCUSED  
GOVERNMENT SERVANT IS ACQUITTED ON APPEAL BY COURT OF LAW**

GOVERNMENT OF HIMACHAL PRADESH

Office of.....

ORDER

*Dated* ..... ' .....

Whereas Shri..... (here enter name and designation of the Government servant) was dismissed/removed/compulsorily retired from service with effect from (here enter the date of dismissal / removal/or compulsory retirement) on the ground of conduct which led to his conviction on a criminal charge;

**OR**

Whereas the penalty of ..... (name the penalty imposed) was imposed of Shri..... (here enter the name and "designation of the Governmentservant) on the ground of conduct which led to his conviction on a criminal charge;

And whereas the said conviction has been set aside by a competent court of law and the said Shri (here enter the name and designation of the Government servant) has been acquitted of the said charge;

And whereas in consequence of such acquittal the Governor/the undersigned has decided that the said order of dismissal/removal/compulsory retirement imposing the penalty of (here enter the name of the penalty) should be set aside;

And whereas the Governor/the undersigned on a consideration of the circumstances of the case has also decided that a further inquiry should be held under the provisions of CCS. (C.C. &A.) Rules, 1965, against the said Shri\_(here enter the name and designation of the Government servant) on the allegations which led to his dismissal, removal/compulsory retirement from service/the imposing of the penalty of (here enter the name of the "penalty imposed).

Now. therefore, the Governor/the undersigned hereby—

(i) sets aside the said order of dismissal/removal/compulsory retirement from service/ imposing the penalty of.. • (here enter the name of the penalty imposed); / (//) directs that a further enquiry should be held under the provisions of the CCS. (C.C. & A.) Rules, 1965, against Shri .....here enter the name of the Government servant on the allegations which led to his dismissal/removal/compulsory retirement from service/the imposing of the penalty of (here enter the name of the penalty imposed);

(ii) directs that the said Shri..... (here enter the name of the Government servant) shall, under sub-rule (4) of rule 10 of the CCS. (C.C & A.) Rules,1965, be deemed to have been placed under suspension with effect from ..... (here enter the date of the dismissal or removal or compulsory retirement from service) and shall continue to remain under suspension until further orders.

"(By order and in the name of the Governor).

*Name and designation of the Competent Authority.*

(To be signed by an officer in the appropriate Administrative Department authorised under Article 166 of t he Constitution to authenticate orders on behalf of the Governor or by the appointing authority as the case may be).

- ") *Vol eases ii wolvin guismisgaJ. removal compulsory retirement only.*
- \* When the order is expressed to be made in the name of the Governor.

**STANDARD FORM FOR SETTING ASIDE THE ORDER OF DISMISSAL ETC., WHEN AN ACCUSED GOVERNMENT SERVANT .IS ACQUITTED BY A COURT OF LAW**

GOVERNMENT OF HIMACHAL PRADESH

Office of .....

**ORDER**

*Dated* .....

Whereas Shri.....(here enter the name and designation of the Government servant) was dismissed/removed/compulsory retired from service with effect from( .)(here enter the date of dismissal /removal/compulsory retirement) on the ground of conduct which led to his conviction on a criminal charge;

**OR**

Whereas the penalty of( ..... ) (here enter the name of the penalty) was imposed on Shri(here enter the name and designation of the Government servant) on the ground of conduct which led to his conviction on a criminal charge;

And whereas the said conviction has been set aside by a competent court of law and the said Shri (here enter the name and designation of the Government servant) has been acquitted of the said charge;

Now, therefore, the Governor/undersigned hereby sets aside the order of dismissal/removal/ compulsory retirement from service/imposing the penalty of (name of the penalty imposed).

\*(By order and **in** the name of the Governor).

*Name and designation of the Competent Authority.*

(To be signed by an officer in the appropriate Administrative Department authorised under Article 166 of the constitution to authenticate orders on behalf of the Governor or by the appointing authority, as the case may be).

\* When the order is expressed to be made in the name of the Governor.

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STANDARD FORM OF CERTIFICATE OF ATTENDANCE OF A WITNESS IN A DEPARTMENTAL ENQUIRY

GOVERNMENT OF HIMACHAL PRADESH  
Office of the Enquiry Officer

**CERTIFICATE**

This is to certify that Shri ..... (name, designation, office etc.) appeared before me as a witness on at (place) ..... in the departmental inquiry against Shri (name, designation, etc.) and was discharged on..... .at time)

Nothing has been paid to him on account of his travelling and other expenses. Place: Dale:

*Signature*.....  
(Inquiry Officer).

**STANDARD FORM OF CERTIFICATE OF ATTENDANCE OF A PRESENTING  
OFFICER/ASSISTING OFFICER**

GOVERNMENT OF HIMACHAL PRADESH

Office of the.....

**CERTIFICATE**

This is to certify that Shii..... (name, designation, office etc.) attended the proceedings in the departmental inquiry against Shri..... (name, designation etc.) to present the case in support of the charges/to assist the said Shri ..... (names) in presenting his case on .....at (Place).

Nothing has been paid to him on account of his travelling and other expenses.

Place: Date:

*Signature* .....  
(Inquiry Officer).