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HAND BOOK
ON DISCIPLINARY PROCEEDINGS FOR DISCIPLINARY AUTHORITIES, INQUIRING AUTHORITIES AND PRESENTING OFFICERS

Contents

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1. Object of the Hand Book

The procedure prescribed under the Andhra Pradesh Civil Services (Classification Control and Appeal) Rules, 1991 ("CCA Rules" for short) for imposition of major penalties on "Government servants" of the Andhra Pradesh State, .is set out here, for the guidance of the disciplinary authorities, inquiring authorities and presenting officers, who are the primary functionaries dealing with disciplinary cases.

2. Importance of Procedure, in Discsiplinary Proceedings

Disciplinary proceedings lay down the procedure that is required to be followed by the competent authorities for the purpose of establishing the truth or otherwise of an allegation of misconduct leveled against a Government servant, and in the event of the Government servant being held guilty of the charge, to impose on him a prescribed penalty, in strict conformity with the provisions of the APCS (CCA) Rules, 1991 applicable to him. If the departmental authority holds the inquiry in violation of the prescribed procedure, the findings and the decision are liable to be set aside by the departmental authorities and courts. More cases are lost for technical lapses, few for want of proof. It is so, because "some": evidence is sufficient to sustain the charge and judicial review does not interfere with the findings of fact arrived at in disciplinary proceedings and it is confined to examination of the decision-making process. Hence, it is necessary that the functionaries charged with the task of conducting disciplinary proceedings should equip themselves with a thorough knowledge of the procedural requirements; and the Hand Book with the ready-at-hand, easy-to-refer information will be found invaluable.

3. Article 311 of the Constitution

The Procedure that is required to be followed in imposing major penalties on civil officials is laid down in Article 311 of the Constitution of India. The Article is extracted below.

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

(Provided further . . .)

(3) If, in respect of . . ."

Government servants (the subject of the study) are "civil officials" mentioned in Article 311 of the constitution, and the constitutional provisions laid down there under would apply to Government servants of the State.

Article 311 of the Constitution, extracted above, lays down that--

(i) an inquiry should be conducted;

(ii) the civil official should be informed of the charges against him;

(iii) he should be given a reasonable opportunity of being heard in respect of those charges;

(iv) a penalty may be imposed on the basis of the evidence adduced during the inquiry;

(v) he shall not be dismissed or removed by an authority subordinate to that by which he was appointed.

Explaining the above constitutional provisions, the Supreme Court held that the rules of natural justice require that - -

(i) charged employee should be given notice of the charges he is called upon to explain and the allegations on which those were based;

(ii) evidence should be taken in the presence of the charged employee;

(iii) he should be given an opportunity to cross-examine the prosecution witnesses;

(iv) he should have an opportunity of adducing all relevant evidence on which he relies. No material should be relied against him without giving him an opportunity of explaining such material..

Non-compliance with the constitutional requirements or deviation there from will render the proceedings null and void.

4. Rules 20, 21 of AP. CS. (CCA) Rules

The Andhra Pradesh Civil Services (CCA) Rules, 1991 in turn elaborated the procedure required to be followed, step by step, stage by stage, under Rules 20 and 21.and the procedure laid down under the said rules meets the constitutional requirements.

5. Conduct Rules

The AP CS (Conduct) Rules, 1964 lay down principles as to what the Government expects the Government servant to do and not to do, and Rule 3 thereof stipulates that the Government servant shall maintain absolute integrity and devotion to duty and do nothing which is unbecoming of a Government servant. Rule 3 is a potent frequently used provision covering a wide range of misconducts like bribery and corruption, forgery and misappropriation, theft and rape.

6. Government servant

"Government servant" means a person as defined under clause (e) of Rule 2 of the AP CS (CCA) Rules, 1991, viz. (i) a member of a Civil Service of the State or holder of a Civil post in connection with the affairs of the State, including such Government servant whose services are temporarily placed at the disposal of the Government of India, Government of another State or a company, corporation or organisation owned or controlled by Government of Andhra Pradesh or a local or other authority or (ii) a member of a Civil Service or holder of a Civil post under the Government of India or Government of another State, whose services are temporarily placed at the disposal of the Government of Andhra Pradesh or (iii) a person in the service of a local or other authority, whose services are temporarily placed at the disposal of the Government of Andhra Pradesh.

Thus, the term Government servant includes those whose services are lent to or borrowed from Government of India, Government of another State or a company, corporation or organization owned or controlled by Government of Andhra Pradesh or a local or other authority.

The CCA Rules, however, do not apply to casual employees, those liable for discharge on less than one month's notice and members of the All India Services.

7. Application to other Services and Undertakings

The Government servants of the State are governed by the APCS (CCA) Rules, 1991 and the AP.CS. (Conduct) Rules, 1964. and employees of other Services and State Public Sector Undertakings are governed by the respective Rules and Regulations applicable to them. For instance, members of the All-India Services ie. the Indian Administrative Service, the Indian Police Service and the Indian Forest Service are governed by the All-India Services (Discipline and Appeal) Rules, 1969 and the All-India Services (Conduct) Rules, 1968.

The basic structure and the underlying principles are the same and the procedure can be suitably moulded to meet the requirements of any particular Service or Undertaking.

8. Basis for Disciplinary Proceedings

Disciplinary proceedings are instituted commonly on the basis of material secured in what is known as a preliminary enquiry conducted by the department on receipt of a complaint and at times on the basis of a well-documented allegation straight away without conducting a preliminary enquiry. Disciplinary proceedings are taken up also as an outcome of an enquiry or investigation conducted by the Anti-Corruption Bureau or any other investigating agency.

Disciplinary proceedings are not exploratory; prima facie material should be available for their institution.

The basis of initiation of disciplinary proceedings cannot be questioned. There is no question of failure to follow procedure as no procedure is prescribed. The Government servant has no right of being heard. or any other right during the preliminary enquiry stage

The material secured during the preliminary enquiry cannot be the basis for imposing a penalty; it can be the basis only for deciding the course of action, whether to drop action or start action.

It may be noted that 'enquiry' in 'preliminary enquiry' is spelt with the letter 'e' while 'inquiry' in 'regular inquiry' is spelt with the letter 'i' as a standard practice in jurisprudence, and 'enquiry' indicates enquiry conduced prior to institution of formal proceedings while 'inquiry' indicates regular inquiry conducted after institution of the disciplinary proceedings.

9. Disciplinary Authority, King-pin

The disciplinary authority is the king-pin around whom the disciplinary proceedings revolve from commencement to conclusion.

Disciplinary authority does not necessarily mean an authority competent to impose the penalty of dismissal; he is an authority competent to impose any of the penalties, as defined under clause (c) of Rule 2 of the CCA. Rules.

10. Drawing up of Charge-sheet

The Disciplinary Authority or the cadre-controlling authority draws up or causes to be drawn up a charge sheet containing the following :

(i) articles of charge containing the substance of the imputations of misconduct or misbehavior in a definite and distinct form;

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

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

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

11. Delivery of the charge sheet together with copies of documents and statements of witnesses

The disciplinary authority shall deliver the charge sheet or cause it to be delivered to the Government servant together with copies of the said documents and copies of statements recorded, if any, of the said witnesses

12. Serving of charge sheet

The drawing up and delivery of the charge sheet is a significant land-mark as it marks the commencement of the proceedings. The best way of serving the charge sheet is personal service by delivering it under acknowledgement. In the alternative, the charge sheet may be sent to the Government servant by registered post acknowledgment due to his last known address,. failing which it may be exhibited on the notice board and published in the official gazette and put in the news papers. Endorsements on postal letters "not found", "not traceable", "not known", "left" do not amount to service, but an endorsement "refused" does. The Supreme Court laid down, in the cases of Delhi Development Authority vs. H.C. Khurana, 1993(2) SLR SC 509 and Union of India vs. Kewal Kumar, 1993(2) SLR SC 554 that charge sheet is issued when it is framed and despatched to the employee irrespective of its actual service on the employee.

13. Articles of charge

(i) Article of charge is the prima facie proven essence of the allegation setting out the nature of the accusation in general terms, such as obtaining illegal gratification, acceptance of sub-standard work, false measurement of work executed, execution of work below specification, breach of a conduct rule etc. A charge should briefly, clearly and precisely identify the misconduct/misbehaviour committed and the Conduct Rule violated. It should give the time, place, persons and things involved so that the Government servant has a clear notice of his involvement. It should be unambiguous and free from vagueness.

(ii) The articles of charge should preferably be in the third person.

(iii) A separate article of charge should be framed in respect of each transaction/event or a series of related transactions/events.

(iv) If, in the course of the same transaction, two or more misconducts are committed, each misconduct should be specifically mentioned.

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

(vi) Multiplication or splitting up of charges on the basis of the same allegation should be avoided.

(vii) The terms delinquent and accused suggest prejudging the issue and are inappropriate, and terms like public servant, employee or simply Government servant should be used instead.

(viii) Charge should not contain expression of opinion as to the guilt of the Government servant. It should start with the word "that" to convey that it is only an allegation and not a conclusion.

(ix) Charge should not relate to a matter which has already been the subject matter of an inquiry and adjudication, unless it involves technical considerations.

(x) There should be no mention of the penalty proposed to be imposed either in the articles of charge or the statement of imputations.

14. Specimen Article of charge

A specimen of an article of charge ia a case of bribery is given below :

"That Sri (name and designation of the Government servant at the time of framing of the charge), while functioning as (designation at the time of the misconduct) from …. to (period) demanded and obtained an amount of Rs.5,000 as illegal gratification from Sri (name), contractor, (address) on at (date and time), in his office (mention any other place) promising to pass his bill of execution of work (give the name of the work) without objections threatening otherwise to withhold payment, which constitutes misconduct of failure to maintain absolute integrity and devotion to duty and commission of an act unbecoming of a Government servant, in violation of sub-rules (1) and (2) of Rule 3 of the APCS (Conduct) Rules, 1964."

Quite often expressions like moral turpitude, habitual corruption are freely used in the articles of charge without basis in the mistaken impression that such

expressions bolster up the charge. They are purposeless and out of place and should be given up unless they are ingredients of the charge.

15. Statement of Imputations

Statement of imputations should contain all relevant facts given in the form of a narration and should embody a full and precise recitation of specific relevant acts of commission or omission on the part of the Government servant in support of each article of charge including any admission or confession made by the Government servant and any other circumstances which it is proposed to take into consideration. It should be precise and factual. It should mention the conduct/behaviour expected or the rule violated. It would be improper to furnish the report of the Investigating Officer as a statement of imputations. It would not be proper to mention the defence and enter into a discussion of the merits of the case to support the imputations inspite of the likely version of the Government servant. All material particulars such as dates, names, places, figures and totals of amounts etc should be carefully checked with reference to documents, statements of witnesses and other record and their accuracy ensured.

The statement should not refer to the preliminary enquiry report unless relied upon or the Anti-Corruption Bureau Report of enquiry/investgation or the advice of the Vigilance Commission, Vigilance Department or any such agency or functionary.

It would be convenient to draft the statement of imputations of misconduct or misbehavior first and based thereon to frame the articles of charge and pick up the witnesses and documents therefrom.

16. Witnesses

In the course of the preliminary enquiry, a number of witnesses are usually examined and their statements recorded. The list of such witnesses should be carefully checked and only such of them who can give evidence to substantiate the charges should be included for examination during the oral inquiry. Others considered necessary may be included. Care should be taken to see that the list of witnesses is complete. Copies of the statements recorded, if any, of the listed witnesses should be furnished to the Government servant with the charge sheet.
Statements of those not relied upon by the disciplinary authority need not be furnished.

17. Documents

A list of documents containing evidence in support of the allegations should be prepared. Individual documents should be listed. .Mere mention of a file is not proper, unless the whole file is relevant. and relied upon. It should be seen that the list of documents is complete. . Copies of the listed documents should be furnished with the charge sheet.

18. Memorandum

The charge sheet is served on the Government servant with a memorandum indicating that he is being proceeded against under Rule 20 of the A.P.C.S. (C.C.A.) Rules, 1991, which gives him notice that major penalty proceedings are instituted against him.

He is required to appear before the disciplinary authority on a date to be specified not exceeding 10 working days and submit a written statement of defence

and to state whether he desires to be heard in person. He is informed that an inquiry will be held only in respect of the articles of charge not admitted by him and that he should specifically admit or deny each article of charge. He is also informed that if he fails to submit the statement of defence or fails to comply with the provisions of the Rules at any stage, the inquiry may be held ex parte. He is warned against bringing influence to bear on the authorities on pain of action for misconduct under Rule 24 of the AP CS (Conduct) Rules, 1964.

It should be signed by the disciplinary authority and where Government are the disciplinary authority, by an officer who is authorised to authenticate the orders on behalf of the Governor.

19. <u>Action on receipt of statement of defence</u>

On the date fixed for appearance, the Government servant shall submit the written statement of his defence. On a consideration of the statement of defence and examination of the Government servant, the Disciplinary authority can take the following course of action:

(i) He may review and modify the articles of charge, in which case a fresh opportunity should be given to the Government servant to submit a fresh statement of defence.

(ii) He may drop some of the charges or all the charges, if he is satisfied that there is no further cause to proceed with.

(iii) He may, where he is of the opinion that imposition of a major penalty is not necessary, impose a minor penalty, on the basis of the record. But he shall not do so where the charged Government servant has not offered a detailed explanation to the charge in the expectation that he could let in his defence in the course of the inquiry.

(iv) The disciplinary authority shall return a finding of guilty on such of the charges as are admitted.

(v) Inquiry need be conducted only into such of the charges as are not admitted.

(vi) The disciplinary authority may conduct the inquiry himself but should refrain from doing so, unless unavoidable.

(vii) He may appoint an Inquiring Authority to inquire into the charges. He should do so only after consideration of the statement of defence and fulfillment of the other tasks assigned to him.

20. <u>Where the Charged Government servant pleads guilty</u>

The disciplinary authority shall ask the Government servant whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the disciplinary authority shall record the plea, sign the record and obtain the signature of the Government servant thereon. The disciplinary authority should give a finding of guilty on such of the charges as are admitted. The admission should be unequivocal, unqualified and unconditional. He may take evidence as he may think it fit. Where the Government servant pleads guilty to all the charges, the disciplinary authority may act in the manner laid down in Rule 21.

21. Appointment of Inquiring Authority

Where the Government servant appears before the disciplinary authority and pleads not guilty to the charges or refuses or omits to plead, the disciplinary authority shall record the plea and obtain the signature of the Government servant thereon and may decide to hold the inquiry itself or if it considers it necessary to do so, appoint a serving or a retired Government servant as inquiring authority for holding the inquiry into the charges.. Though the A.P. Civil Services (CCA) Rules,1991 permit such an inquiry being held by the disciplinary authority itself, the normal practice is to appoint another officer as Inquiry Officer. The officer selected should be of sufficiently senior rank and one who is not suspected of any prejudice or bias against the charged Government servant and who did not express an opinion on the merits of the case at an earlier stage. The inquiring authority could also be the Chairman, Commissionerate of Inquiries or a member thereof provided he is a serving or a retired Government servant.

22. Appointment of Presenting Officer

The disciplinary authority may also appoint a Government servant or legal practitioner as Presenting Officer to present the case on his behalf in support of the articles of charge before the Inquiring Authority. Ordinarily, a Government servant belonging to the departmental set up who is conversant with the case will be appointed as the Presenting Officer except in cases involving complicated questions of law where it may be considered desirable to appoint a legal practitioner to present the case on behalf of the disciplinary authority. The Presenting Officer should be senior in rank to the charged Government servant. An officer who made the preliminary enquiry into the case should not be appointed as Presenting officer as bias may be attributed to him. Government instructed that in all cases investigated or enquired into by the Anti–Corruption Bureau, the Bureau shall nominate an officer other than the one who investigated or conducted the enquiry in the case, and the disciplinary authority shall appoint him as the Presenting officer.

The Presenting Officer should ensure that the prescribed procedure is followed and raise written objections against any irregularities and acts of prejudice on the part of the Inquiry Officer then and there and report to the Disciplinary Authority promptly for taking up the matter with the Government.

The Presenting Officer should be supplied with copies of the documents and other relevant papers. He may also be given custody of the original documents sought to be produced in support of the charges. 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 of defence without admitting the charges, a list of such facts should be prepared by the Presenting Officer and brought to the notice of the Inquiring authority at the appropriate stage of the proceedings so that it may not be necessary to lead any evidence to prove the facts which the Government servant has admitted.

23. Defence Assistant

The disciplinary authority shall serve copies of the orders appointing the inquiring authority and the Presenting Officer on the Government servant and inform him that he may take the assistance of any other Government servant to present the case on his behalf, but he 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, and ask him to finalise the selection of his defence assistant before the commencement of the proceedings and adjourn the case to a date not exceeding five days for the said purpose.

The charged employee is entitled to have a Government servant as his Defence Assistant, subject to restrictions imposed under the Rules.

He has no right to have a particular employee as defence assistant, if the controlling authority is unable to spare his services for the purpose. No permission as such is required for the charged employee to take a Defence Assistant or for the employee concerned to function as a Defence Assistant. It is enough if the controlling authority is intimated of the fact.

If the Presenting Officer appointed by the disciplinary authority is a legal practitioner, the Government servant will be so informed by the disciplinary authority so that the Government servant may, if he so desires, engage a legal practitioner to present the case on his behalf before the Inquiring Authority. The Government servant may not otherwise engage a legal practitioner. In other cases, the Government servant may avail himself of the assistance of any other Government servant as defined in rule 2(e) of the A.P.Civil Services (CCA) Rules, 1991. However, he cannot take the assistance of a Government servant who has two pending disciplinary cases on hand in which he has to give assistance. He may also take the assistance of a retired Government servant. He may take the assistance of a Government servant posted at any other station only if permitted by the inquiring authority. He shall not take the assistance of a Government servant who is dealing in his official capacity with the case of the particular inquiry or any officer to whom an appeal may be preferred .

24. <u>Defence documents</u>

The disciplinary authority shall inform the Government servant to submit within five days a list of documents, which he requires to be discovered or produced by Government for the purpose of his defence indicating the relevance of the documents so required.

25. <u>Documents which are not relevant</u>

The disciplinary authority may for reasons to be recorded in writing refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

The disciplinary 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 documents by such date as may be specified in such requisition.

26. <u>Documents, where privilege is claimed</u>

On receipt of the requisition, every authority having the custody or possession of the requisitioned documents shall produce the same before the disciplinary 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, shall submit the fact to the Head of the Department or to the Secretary of the Department concerned for a decision in the matter. Such decision shall be informed to the disciplinary authority and where the decision is to withhold production of all or any of such documents, the disciplinary 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 and where the decision is against withholding the production of all or any of such

documents, every authority having the custody or the possession of such requisitioned documents shall produce the same before the disciplinary authority.

27. Privileged Documents, examples

The following are examples of documents, access to which may reasonably be denied:

(i) Reports of a departmental officer appointed to hold a preliminary enquiry and reports of enquiry/investigation of Anti-Corruption Bureau:

These reports are intended only for the disciplinary authority to satisfy himself whether departmental action should be taken against the Government servant or not and are treated as confidential documents. These reports are not presented before the Inquiry Officer and no reference to them is made in the statement of imputations. If the Government servant makes a request for the production/inspection of the report of preliminary enquiry by the departmental officer or the Anti-Corruption Bureau, the Inquiry Officer should pass on the same to the disciplinary authority concerned, who may claim privilege of the same in public interest.

(ii) File dealing with the disciplinary case against the Government servant:

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

(iii) Advice of Vigilance Commission:

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

(iv) Character roll of the Government servant:

The character/confidential roll of the Government servant should not be shown to him.

If preliminary report of enquiry is referred to in the article of charge or statement of allegations, it has to be made available to the Government servant.

A copy of the First Information Report registered by the Police, if any, may be made available to the Government servant, if asked for.

28. Charge-sheet etc forwarded to Inquiry Officer

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) copies of the statements of witnesses referred to in sub-rule (3);

(iv) copies of documents referred to in sub-rule (3);

(v) evidence proving the delivery of copies of the documents referred to in sub-rules (3) and (4), to the Government servant, and

(vi) a copy of the order appointing the Presenting Officer.

The disciplinary authority shall also forward to the inquiring authority documents received under clause (g) of sub-rule (5) as and when they are received.

After receiving the documents mentioned under clause (a) of sub-rule (7) the inquiring authority shall issue a notice in writing to the Presenting Officer and also to the Government servant to appear before him on such day and at such time and place specified by him which shall not exceed ten days.

The Presenting Officer and Government servant shall appear before the inquiring authority on the date fixed under sub-rule (8).

If the Government servant informs the inquiring authority that he wishes to inspect the documents mentioned in sub-rule (3)of rule 20 for the purpose of preparing his defence, the inquiring authority shall order that he may inspect the documents within five days and the presenting officer shall arrange for the inspection accordingly.

The inquiring authority shall call upon the Government servant whether he admits the genuineness of any of the documents, copies of which have been furnished to him and if he admits the genuineness of any document it may be taken as evidence without any proof by the concerned witness.

The inquiring authority shall adjourn the case for inquiry to a date not exceeding ten days for production of evidence and require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge.

29. <u>Evidence on behalf of Disciplinary Authority</u>

On the date fixed for recording the evidence, 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 evidence shall be recorded as far as possible on day-to-day basis till the evidence on behalf of the disciplinary authority is completed.

The witnesses shall be examined by or on behalf of the Presenting Officer and they 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 permission of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

30. <u>New evidence on behalf of Disciplinary Authority</u>

If it appears necessary before the closure 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.

In such case the Government servant shall be entitled to have 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.

New evidence shall not be permitted or called for and witness shall not be re-called 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.

The procedure mentioned above is elaborated below.

31. <u>Summoning of Witnesses</u>

It is the duty of the Inquiry Officer to take all necessary steps to secure the attendance of witnesses of both sides. The Inquiry Officer, however, would be within his right to ascertain in advance from the charged Government servant what evidence a particular witness is likely to give. If the Inquiry Officer is of the view that such evidence would be entirely irrelevant to the charge against the Government servant and failure to secure the attendance of the witness would not prejudice the defence, he should reject the request for summoning such a witness. In every case of rejection, the Inquiry Officer should record the reasons in full for doing so. The Supreme Court, in the State of Bombay vs. Nurul Latif Khan, AIR 1966 SC 269, have observed that if the Government servant desires to examine witnesses whose evidence appears to the Inquiry Officer to be thoroughly irrelevant, the Inquiry Officer may refuse to examine such witnesses but in doing so he will have to record his special and sufficient reasons.

The witnesses whom the charged Government servant proposes to examine, other than those who are found not relevant, should ordinarily be summoned by the Inquiry Officer. It is, however, not obligatory for the Inquiry Officer to insist on the presence of all such witnesses cited by the charged Government servant and to hold up proceedings until their attendance has been secured. The inability to secure attendance of a witness will not vitiate the proceedings on the ground that the Government servant was denied reasonable opportunity. The Inquiry Officer conducting an inquiry has no power to enforce the attendance of witnesses under the provisions of the A.P. Civil Services (CCA) Rules, 1991, unless the Andhra Pradesh Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1993 are applicable and specifically extended to the particular inquiry. If they are official witnesses, the Head of Department or Head of Office may be approached.

The notices addressed to the witnesses will be signed by the Inquiry Officer. Those addressed to witnesses who are Government servants will be sent to the Head of Department/Office under whom the Government servant, who is to appear as witness, is working for the time being, with the request that the Head of Department/Office will direct the Government servant to attend the inquiry and to tender evidence on the date and time fixed by the Inquiry Officer.

Non-compliance with the request of the Inquiry Officer by the Government servant summoned would be treated as conduct unbecoming of a Government servant and would make him liable for disciplinary action.

The notices addressed to non-official witnesses will be sent by registered post acknowledgment due.

In cases emanating from the Anti-Corruption Bureau, the notices addressed to non-official witnesses may be sent to the Director General, Anti-Corruption Bureau for delivery to the witnesses concerned. The Presenting Officer, with the assistance of the Investigating Officer of the Anti-Corruption Bureau will take suitable steps to

secure the presence of the witnesses on behalf of the disciplinary authority on the date fixed for their examination.

32. Examination of witnesses of Disciplinary Authority

On the date fixed for the inquiry, the Presenting Officer will be asked to lead the presentation of the case on behalf of the disciplinary authority.

The Presenting Officer will draw the attention of the Inquiry Officer to facts admitted by the Government servant in his written statement of defence, if any, so that it may not be necessary to lead any evidence to prove such facts. The Presenting officer should discuss with the defence assistant and arrive at an understanding in the interest of speedy progress of the proceedings.

The documentary evidence by which the articles of charge are proposed to be proved will then be produced by the officer having custody of the documents or by an officer deputed by him for the purpose. The documents produced will be numbered as Ex.S1, Ex.S2 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 charged Government servant may insist on cross-examining him.

The inquiring authority shall call upon the Government servant whether he admits the genuineness of any of the documents, copies of which have been furnished to him, and if he admits the genuineness of any document it may be taken as evidence without any proof by the concerned witness. Here also, the Presenting officer should convince the charged official/defence assisant of the futility of seeking formal proof of undisputed documents.

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, by or on behalf of the Presenting Officer. The witnesses may be numbered as S.W.1, S.W.2 and so on.

During the examination-in-chief, 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.

33. Cross-examination of Witnesses

The right of the Government servant to cross-examine a witness giving evidence against him in a departmental proceeding is a safeguard implicit in the reasonable opportunity to be given to him under Article 311(2) of the Constitution. But the rules of evidence laid down in the Evidence Act are, strictly speaking, not applicable and the Inquiry Officer, the Presenting Officer and the charged Government servant are not expected to act like judge and lawyers. The scope and mode of cross-examination in relation to the departmental inquiries have not been 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 inquiries should, as far as possible, conform to the accepted principles of cross-examination under the Evidence Act.

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 opponent's case. The art of cross-examination lies in interrogating witness in a manner which would bring out the concealed truth.

Usually considerable latitude is allowed in cross-examination. It is not limited to matters upon which the witness has already been examined-in-chief, but may extend to the whole case. The Inquiry Officer may not ordinarily interfere with the discretion of the cross-examiner in putting questions to the witness. However, a witness summoned merely to produce a document or a witness whose examination has been stopped by the Inquiry Officer before any material question has been put is not liable to cross-examination. It is also not permissible to put a question on the assumption that a fact was already proved. A question about any matter which the witness had no opportunity to know or on which he is not competent to speak may be disallowed. The Inquiry Officer may also disallow 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.

34. 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. If the Presenting Officer has been allowed to re-examine a witness on any new matter not already covered by the earlier examination/cross-examination, cross-examination on such new matter covered by the re-examination, may be allowed.

35. Examination of Witness by Inquiry Officer

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

36. Where a witness turns hostile

If a Government servant who had made a statement in the course of a preliminary enquiry changes his stand during his examination at the inquiry and gives evidence which is materially different from his signed statement recorded earlier, the Inquiry Officer may permit the party calling the witness to treat him as hostile and cross-examine him, when there is anything on record or in the testimony of the witness to show that there is material deviation.

Government Servants are liable to be proceeded against for misconduct in violation of rule 3(1), (2) of the A.P.C.S. (Conduct) Rules, 1964, where, having given a statement under sec.164 Cr.P.C. or having given a signed statement or being signatories to a mediators report as panch witnesses, deviate from the same materially in a departmental inquiry.

37. Recording of Evidence

Disciplinary proceedings are held in camera; they are not open to the public.

A typist may type the deposition of witness to the dictation of the Inquiry Officer. The deposition 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, his age, parentage, calling etc about his identity. No oath is administered to witnesses.

The deposition will generally be recorded as narration but on certain points it may be necessary to record the question and answer verbatim.

As examination of each witness is completed, the Inquiry Officer will read the deposition as typed to the witness in the presence of the Government servant and/or the defence assistant or his legal practitioner as the case may be. 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 deposition, the Inquiry Officer may, instead of correcting the deposition, record the objection of the witness. The Inquiry Officer will record and sign the following certificate at the end of the deposition of each witness:

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

The witness will be asked to sign each page of the deposition. The charged Government servant when he examines himself as defence witness, should also be required to sign his deposition. If a witness refuses to sign the deposition, the Inquiry Officer will record this fact and append his signature.

If a witness deposes in a language other than English but the deposition is 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 deposition was translated and explained to the witness in the language in which the witness deposed.

Copies of the depositions will be made available at the close of the inquiry each day to the Presenting Officer as well as to the charged Government servant.

The documents exhibited and the depositions of witnesses will be kept in separate folders.

38. Defence of Government servant

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 and to submit a list of witnesses to be examined on his behalf for which purpose the case may be adjourned to a date not exceeding five days. 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 and the list of defence witnesses may be provided to the presenting officer.

The case shall be adjourned to a date not exceeding ten days for production of defence evidence.

39. Evidence on behalf of Government servant

The evidence on behalf of the Government servant shall then be produced. The documents produced by the defence will be numbered Ex.D1, Ex.D2 and so on and the witnesses who give oral evidence will be numbered as D.W.1, D.W.2 and so on.

Each witness will be examined by the Government servant or on his behalf by his Defence Assistant or legal practitioner 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. 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 it fit. In that event the witness may be re-examined by or on behalf of the 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.

The Government servant may offer himself as his own witness. In that case, he may allow himself to be examined by his Defence Assistant or legal counsel as the case may be. 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 Inquiry Officer in the same way as other witnesses. If the Government servant does not offer himself as his own witness, this fact may not be relied upon by the Presenting Officer to deduce therefrom his guilt in any way.

The record of their depositions will be made and signed and made available to the parties concerned in the same way as described in the above paragraphs.

If the charged Government servant wants to examine the Presenting Officer as a defence witness, there can be no objection in principle in accepting the request. In such an event, he cannot function simultaneously as a Presenting Officer while deposing as a defence witness and another officer can be authorised to cross-examine him. He can resume his functions as Presenting Officer after his examination as defence witness was over. The inquiry officer may consider changing the presenting officer in case his testimony is against the interests of the case of the disciplinary authority.

40. <u>Government servant questioned on evidence</u>

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 purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

This is an important provision but seldom complied with. Failure of the Inquiry Officer to question the charged official on the ircumstances appearing against him and eliciting his explanation would amount to denial of reasonable opportunity to the charged official to defend himself. The use of the expression ‘circumstances appearing against him’ twice is significant.

For instance, in a case of bribery, the complainant may have deposed that the charged official visited him at his residence on a particular day at a particular time (where the demand and acceptance of the illegal gratification took place later). The inquiry officer is required to put this circumstance to the charged official and seek his explanation. It is up to him to deny the visit outright or admit it and explain it away as a courtesy call. All such circumstances should be put to the charged official and his explanation sought.. It is not an empty formality. It enables the Inquiry officer to hold a circumstance as incriminating in the absence of plausible explanation,and helps him in assessing the truthfulness or otherwise of witnesses and veracity of the defence version...

But, if the Charged official has examined himself as a witness, the inquiry officer has discretion whether or not to question him, as the charged official had opportunity to explain such circumstances on his own while deposing as a witness and the charged official may question the charged official if any circumstance remained unanswered.

41. Oral Arguments/Written Briefs

After the completion of the production of evidence on both sides, the Inquiry Officer may hear the Presenting Officer and the charged Government servant or permit them to file written briefs of their respective cases, if they so desire. In the case of written briefs, the Presenting Officer should submit his brief first and furnish a copy thereof to the charged Government servant and the charged Government servant will thereafter submit his written brief. The charged official should be furnished a copy of the brief of the presenting officer, so that he gets an opportunity to meet the contentions raised therein by the Presenting officer; Otherwise, it will amount to the inquiring officer hearing the presenting officer behind the back of the charged official and denial of opportunity to the charged official to defend himself.

42. Requests, Representations etc during Inquiry

Representations are made by both sides during the course of the inquiry. The Inquiry Officer should pass appropriate orders assigning reasons especially when the orders have an adverse effect on the charged official and place them on record. This record comes in handy to meet any contention of the charged official of denial of opportunity to defend himself.. One word orders, "rejected"and the like will not serve the purpose.

43. Daily Order Sheet

The Inquiry Officer should maintain Daily Order Sheet in which should be recorded in brief the day-to-day transaction of business including date, time, venue of inquiry and progress of inquiry. A gist of the representations made and the orders passed thereon should also be recorded therein.

44. Report of Inquiry Officer—Factors for consideration

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

The Inquiry officer should discuss and assess the evidence on record and give reasons for his findings. Mere incorporation of extracts of statements of witnesses or a summary of the evidence does not meet the requirements.

The Inquiry Officer should take particular care to see that no evidence, which the charged Government servant had no opportunity to refute, is relied on against him.

Findings should be based on the evidece adduced during the inquiry and brought on record. He should not take any extraneous material not forming part of the proceedings into consideration or import his personal knowledge to the inquiry.

Evidence of a hostile witness need not be disregarded totally and can be taken into consideration.

No material from the personal knowledge of the Inquiry Officer should be imported into the case.

There is no question of giving benefit of doubt. The proof required is preponderance of probability

45. Charge, where proved in-part

The Inquiry Officer should give findings whether the charged Government servant is guilty of the charge or not guilty. He may give a finding that the charge is proved in part, if the charge is not proved in its entirety and only some of the aspects of the charge are proved.

46. Where a different charge is proved

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.

The inquiry officer can give a finding where a charge different from the charge framed is proved, provided the charged official has admitted the facts or he had an opportunity of defending himself.

An illustrative example can be a case of bribery where the charge of the charged official demanding and accepting of a bribe may not have been established but a charge of placing himself under pecuniary obligation with a person with whom he is having official dealings may have been established on the basis of admitted facts and the defence set up by the charged official that the bribe amount represented repayment of a loan taken earlier or a loan advanced by him at the trap time as in such a case both the stipulations are fulfilled.

47. Inquiry Report—what it should contain

The report of the Inquiry Officer should contain:

(i) an introductory paragraph in which reference is made about the appointment of the Inquiry Officer and the dates on which and the places where the inquiry was held;

(ii) the articles of charge and the statement of imputations of misconduct or misbehaviour;

(iii) charges which were admitted or dropped or not pressed, if any;

(iv) charges that were actually inquired into;

(v) the defence of the Government servant in respect of each article of charge

(vi) an assessment of the evidence in respect of each article of charge

(vii) findings on each article of charge. and the reasons therefore..

48. Record of Major Penalty Proceedings

The Inquiry Officer may maintain the record in a major penalty proceedings in the following folders:

(i) a folder containing:

(a) list of exhibits produced in proof of the articles of charge;

(b) list of exhibits produced by the charged Government servant in his defence;

(c) list of witnesses examined in proof of the charges;

(d) list of defence witnesses.

(ii) a folder containing depositions of witnesses arranged in the order in which they were examined;

(iii) a folder containing exhibits;

(iv) a folder containing daily order sheet;

(v) 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 orally made.

49. Inquiry Officer to forward record of inquiry to Disciplinary Authority

The Inquiry Officer, where it is not itself the disciplinary authority, will forward to the disciplinary authority his report together with the record of the inquiry including the exhibits. Spare copies of the report may be furnished, as many copies as the number of charged Government servants, and one more copy for the Anti-Corruption Bureau in cases investigated by them.

(a) the report prepared by the Inquiring Authority;

(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.

50. Inquiring Authority, functus officio

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

51. Functions and Powers of Inquiring Authority

The following are the functions, which an Inquiry Officer will have to discharge, and powers, which he can exercise in the conduct of an inquiry:

(1) There should be a proper order of appointment issued by the Disciplinary authority in respect of the inquiry in his favour and the Inquiry Officer should check up the order to satisfy himself that it is properly worded and signed by the competent authority.

(2) A Government servant (superior in rank), serving or retired, can be appointed as Inquiry Officer.

(3) Inquiry Officer can proceed with the inquiry, except when there is a specific order of stay issued by Court.

(4) Inquiry Officer is a delegate of the Disciplinary Authority.

(5) Inquiry Officer cannot delegate power of conducting inquiry.

(6) Inquiry Officer is not subject to the directions of the Disciplinary authority or his own superior officers in the conducting of the inquiry.

(7) A witness cannot be Inquiry Officer.

(8) Inquiry Officer should stay the proceedings where bias is alleged against him and await orders of competent authority. Bias should have existed before the enquiry had started. There is no question of bias in official functions.

(9) He should check up whether the enclosures to the charge memo and other records are received.

(10) Venue of inquiry should normally be the place where witnesses and documents are readily available, but any other place can be fixed according to the requirements of the case and convenience of the parties.

(12) He should arrange for production of documents required by the charged employee for his defence. He can reject the request to summon documents considered not relevant to the inquiry, and in such a case he should record reasons for rejecting the request. Where the competent authority claims privilege, he is bound by such decision and he cannot demand their production.

(13) Inquiry Officer can reject the request to call any witnesses cited by the charged official, if their examination is considered irrelevant or vexatious or causes harassment or embarrassment.

(14) Inquiry Officer may summon defence witnesses and write to the employer and not merely leave it to the charged employee to produce them.

(15) Charged employee can examine himself as a witness in his own behalf in which case he can be subjected to cross-examination on behalf of the disciplinary authority.

(16) At the preliminary hearing, he should apprise the charged employee, the defence assistant, if any, and the presenting officer, of the

procedure of the inquiry and draw up a programme in consultation with them.

(17) The charged employee may be asked whether he would admit the genuineness and authenticity of the listed documents, and admitted documents may be marked as exhibits straightaway. This would obviate the necessity of examining witnesses to prove them.

(18) Depositions of witnesses may be recorded in a narrative form. Wherever considered necessary, question and answer may be recorded verbatim. The statement should be read over to the deponent, and corrections if any made in the presence of both sides. The signature of witness should be obtained on each page and the Inquiry Officer should also sign on each page. At the end, the Inquiry Officer should record the following certificate:

"Read over to the witness in the presence of the charged officer and admitted by him as correct/Objection of the witness recorded."

(19) During the examination of a witness, the Inquiry Officer should see that the witness understands the question before answering. If he gives evidence in a language other than English, it shall be correctly translated into English and recorded, unless recorded in the language spoken. If the witness deposes in a language other than English and the deposition is recorded in English the deposition should be translated in the language in which it is made and read over to the witness and a certificate recorded as follows:

"Translated and read over to the witness in -- (mention the language) and admitted by him to be correct."

(20) Leading questions i.e. questions suggesting answers to the witness should not be allowed in chief-examination or re-examination, unless such questions relate to matters which are introductory or undisputed or which have already been sufficiently proved.

(21) Inquiry Officer may record the demeanour of the witnesses wherever considered necessary and discuss it in his report.

(22) Inquiry Officer may put such questions, as he deems fit, to witnesses for obtaining clarification on any point, but he shall not cross-examine witnesses.

(23) The Inquiry Officer may permit the party calling a witness to treat him as hostile and cross-examine him, when the witness deviates from his previous statement or from the material on record. In such a case, the Inquiry Officer should discuss the evidence of such hostile witness while rejecting or accepting it, in the inquiry report.

(24) Where a number of witnesses to an incident or any aspect are cited in the charge sheet, there is no obligation to call all of them. Presenting Officer has discretion as to which of them should be called and the Inquiry Officer cannot interfere with his discretion unless it is shown that there is some oblique motive for not examining them.

(25) Combined statements of two or more witnesses should not be recorded. Separate statement should be recorded of each witness.

(26) No other witness or outsider shall be allowed during the examination of each witness.

(27) Previous statements recorded during preliminary enquiry, investigation, trial cannot be relied upon, unless those witnesses are produced for cross-examination.

(28) Inquiry Officer has no power to compel the attendance of witnesses and production of documents, unless the provisions of the Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, are applicable and specifically extended to the inquiry. If they are official witnesses, the head of the department or office may be requested. Action can be taken against official witnesses for failure to appear.

(29) Before the close of the evidence on behalf of the disciplinary authority, the Inquiry Officer may in his discretion allow the Presenting Officer to produce evidence not included in the list and may himself call for new evidence or recall and reexamine any witness. In such a case he shall make available to the charged employee a list of the further evidence and allow him to inspect the documents and adjourn the inquiry. He may also allow the charged employee to produce new evidence, if he is of the opinion that production of such evidence is necessary in the interests of justice.

(31) Inquiry Officer should examine the charged employee on the circumstances appearing against him in the evidence on record to enable him to explain them.

(32) Inquiry Officer cannot cross-examine the charged employee or put incriminating questions.

(33) Arguments may be heard on both sides. Where written briefs are submitted, it is necessary that a copy of the brief of the Presenting Officer is furnished to the charged employee before the latter is asked to submit his own.

(34) Inquiry Officer is well within his right to regulate the inquiry in such a manner as to cut out delay, but in the process cannot refuse oral or documentary evidence relevant to his case which the charged employee wants to lead in his defence. He can check and control cross-examination of witnesses, if made in irrelevant manner.

(35) Inquiry Officer examining himself as a witness cannot continue as Inquiry Officer.

(36) Where there is no provision for appointment of a Presenting Officer or where a Presenting Officer is not appointed, Inquiry Officer can discharge the functions of Presenting Officer.

(37) Adjournment may be granted where there are weighty reasons and the Inquiry Officer is satisfied about the genuineness and bonafides of the request. Reasons for rejecting the request for adjournment should be recorded and a mention made in the Daily Order Sheet.

(38) Representations received from both sides should be kept in separate files.

(39) A daily order sheet should be maintained where the day-to-day transaction of business including date and time, venue of inquiry and brief particulars of progress of inquiry should be recorded.

(40) A gist of representations and requests of charged employee and Presenting Officer and orders passed thereon should be recorded in the Daily Order Sheet.

(41) Orders passed by the Inquiry Officer on any issue in the course of the inquiry, are not appealable.

(42) Where, during the course of the inquiry, the Inquiry Officer is succeeded by another Inquiry Officer, the successor shall proceed with the inquiry from the stage at which it was left by the predecessor, unless he considers it necessary to recall and reexamine any of the witnesses already examined.

(43) Inquiry Officer should not take any extraneous material or material not brought on record in the inquiry, into consideration.

(44) Inquiry Officer should not refer to the preliminary enquiry report or report of investigation by the police or nay other record or documents, when they are not part of the record of inquiry.

(45) Inquiry Officer should not make any reference to the advice of any legal or other officer, or act on such advice.

(46) Inquiry Officer should not impart his personal knowledge into the inquiry.

(47) For any decision taken and orders passed on any matter in the course of the inquiry, cogent reasons should be given in justification in writing and placed on record.

(48) Inquiry Officer should discuss and assess the evidence, oral and documentary, on record and give reasons for the findings arrived at by him. Mere incorporation of extracts of statements or a summary of evidence does not meet the requirements.

(49) Findings on the charges should be based entirely on the evidence adduced during the inquiry.

(50) Inquiry Officer should give his findings on each charge.

(51) Inquiry Officer cannot recommend penalty.

(52) The approach of the Inquiry Officer in arriving at a decision on any issue should be that of a reasonable man taking a reasonable view of the matter.

(53) Inquiry Officer should just do what is “lawful” without being “legalistic”.

52. Action on Inquiry Report

On receipt of the Inquiry Report and the record of inquiry from the Inquiry officer, the Disciplinary Authority can take action as follows:

The report of the Inquiry Officer is intended to assist the disciplinary authority in coming to a conclusion about the guilt or otherwise of the charged official. The findings of the Inquiry Officer are not binding on the disciplinary authority and it can

disagree with the findings of the Inquiry Officer and come to its own assessment of the evidence forming part of the record of inquiry.

The disciplinary authority will examine the Inquiry report and the record of inquiry carefully and dispassionately and satisfy itself that the charged official has been given a reasonable opportunity to defend himself.

The disciplinary authority will consider whether the procedure laid down has been complied with and whether such non-compliance if any has resulted in violation of any provisions of the Constitution or in miscarriage of justice

The disciplinary authority will record its tentative findings in respect of each article of charge whether, in its opinion, it stands proved or not. The disciplinary authority must apply its mind to all relevant facts which are brought out in the inquiry report and other case record for arriving at an opinion as to the tentative findings on the charges.

53. Further Inquiry

If the disciplinary authority considers that a clear finding is not possible or that there is any defect in the inquiry, for instance where the Inquiry Officer has taken into consideration certain factors without giving the charged official opportunity to defend himself in that regard, or where there are grave lacunae or procedural defects vitiating the inquiry or the disciplinary authority comes to the conclusion that the inquiry was not made in conformity with the principles of natural justice, the disciplinary authority may, for reasons to be recorded by it in writing, remit the case to the Inquiry Officer for further inquiry and report. He cannot appoint a different inquiry officer for the purpose. The Inquiry Officer will, thereupon, proceed to hold further inquiry according to the provisions of rule 20 of the A.P. Civil Services (CCA) Rules, 1991..

The disciplinary authority cannot remit the case for further inquiry for the reason that the inquiry report has gone in favour of the charged official or that it does not appeal to him or for the purpose of inducing the inquiry officer to fall in line with him. In such cases, the disciplinary authority can, if it is satisfied on the evidence on record, disagree with the Inquiry Officer and arrive at his own findings

54. Disciplinary authority disagreeing with the Inquiry officer, need not contest the conclusions

On the question of the disciplinary authority disagreeing with the findings of the inquiring authority, the Supreme Court held, in the case of High Court of Judicature at Bombay vs Shashikanth S. Patil, 2000(1) SLJ SC 98, that the reasoning of the High Court that when the Disciplinary Committee differed from the finding of the inquiry officer it is imperative to discuss the materials in detail and contest the conclusion of the inquiry officer, is quite unsound and contrary to the established principles in administrative law. The Disciplinary Committee was neither an appellate nor a revisional body over the Inquiry Officer's report. It must be borne in mind that the inquiry is primarily intended to afford the delinquent officer a reasonable opportunity to meet the charges made against him and also to afford the punishing authority with the materials collected in such inquiry as well as the views expressed by the inquiry officer thereon. The findings of the inquiry officer are only his opinion on the materials, but such findings are not binding on the disciplinary authority as the decision-making authority is the punishing authority and therefore that authority can come to its own conclusion ofcourse bearing in mind the views expressed by the inquiry officer. But it is not necessary that the disciplinary authority should "discuss materials in detail and contest the conclusions of the inquiry

officer". Otherwise the position of the disciplinary authority would get relegated to a subordinate level.

He shall forward a copy of the inquiry report to the Government servant requiring him to submit his written representation or submission. Where the inquiring officer holds the charge as not proved and the disciplinary authority holds a contrary view the reasons for such disagreement should also be communicated to the charged official.

He shall consider the representation of the charged official, if any, before proceeding further.

He may impose a minor penalty, even though the disciplinary proceedings are instituted for imposition of a major penalty.

(vi) Where the authority is not competent to impose a major penalty, it shall forward the record of inquiry to the authority competent to impose a major penalty and the latter authority may act on such record.

He may impose any of the major penalties.

It is not necessary to give an opportunity of making a representation on the penalty proposed to be imposed .

The penalty imposed should be commensurate with the gravity of the charge established.

The order passed by the disciplinary authority is in exercise of quasi-judicial powers vesting in him. He should apply his mind and arrive at his own decision on findings of guilty or otherwise and on quantum of penalty and pass a self-contained speaking order and record reasons wherever he differs with the findings of the inquiry officer. Disciplinary authority should not call for remarks or seek the views of Head of Department or of any officer or of the Anti-Corruption Bureau.

55. Imposition of Penalty

The penalty should be commensurate with the gravity of the charge established. Rule 9 of the A.P.C.S.(C.C.A.) Rules, 1991 has a specific provision that in proven cases of bribery and corruption, a penalty of dismissal or removal from service should normally be imposed. To ensure a clean and efficient administration, Government directed that in all proven cases of misappropriation, bribery, bigamy, corruption, moral turpitude, forgery, outraging the modesty of women, the penalty of dismissal from service should be imposed. Government further laid down that disciplinary action should be taken against the officials where a minor penalty is imposed in cases of the type mentioned above, in violation of the proviso to rule 9 of the APCS (CCA) Rules, 1991. (G.O.Ms.No.2 G.A.(Ser.C) Dept. dated 04-01-1999, Circular Memorandum No.698/Special.B3/99-1 G.A (Spl.B) Dept. dated 30-08-1999)

"Warning", "let off", "to be more careful in future" and the like are not penalties specified under rules 9 and 10 of the APCS (CCA) Rules 1991. The disciplinary authority should impose a specified penalty in case he is held guilty of the charge or exonerate him in case he is held not guilty of the charge.

56. Order on Inquiry Report

After considering the advice of the Public Service Commission, 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. The penalty imposed can be minor or major.

In arriving at a finding on the articles of charge and deciding the quantum of penalty, the disciplinary authority should take into account only evidence adduced during the inquiry and which the Government servant had the opportunity to rebut.

The order should be signed by the disciplinary authority competent to impose the penalty.

57. Orders where charges held 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 Inquiry Officer, its own findings on it and brief reasons for its disagreement, if any, with the findings of the Inquiry Officer.

58. "Show Cause Notice"

Article 311(2) of the Constitution was amended in 1963 making it necessary to give the Government servant concerned a reasonable opportunity of making representation on the penalty proposed to be imposed. The Article was further amended in 1976 dispensing with the need to give such an opportunity. As from 3-1-77, when the amendment came into force, it was not necessary to give opportunity to the Government servant of making representation on the penalty proposed to be imposed.

Still where the inquiry is conducted by an officer other than the disciplinary authority himself, it is necessary for the disciplinary authority to furnish a copy of the Inquiry Officer's report to the charged officer and give him an opportunity to make a representation against the contentions raised in the report (not against the proposed penalty) before taking a decision on the charges.

It may be noted that there is no need to give the Government servant a show cause notice against the penalty proposed to be imposed or a show cause notice against the report of inquiry as such. Communication of a copy of the inquiry report is for the limited purpose of enabling the Government servant to submit his written representation on the report for the consideration of the disciplinary authority. before arriving at a finding on the charges. The use of the expression 'show cause notice ' while communicating a copy of the inquiry report is misleading and should be given up.

59. Consultation with the Vigilance Commission

The advice of the Vigilance Commission shall be sought both before arriving at a provisional conclusion upon receipt of the inquiry report and after receiving the submission of the charged officer if any and before arriving at a final conclusion regarding the findings on the delinquency and the penalty to be imposed on the charged officer. The disciplinary authority shall give due consideration to the advice of the Commission. Deviation if any from the advice shall be made only after obtaining orders of the Chief Minister through the Minister concerned and the Chief Secretary to Government. Though the advice of the Commission is not binding on the disciplinary authority or the Government such deviation from the advice of the Commission will be included in the Annual Report of the Commission.

60. Consultation with Public Service Commission

In cases in which it is necessary to consult the Andhra Pradesh Public Service Commission, the record of the inquiry together with relevant documents will be forwarded by the disciplinary authority to the Public Service Commission for advice, and its advice taken into consideration before imposing the penalty. While referring the case to the Public Service Commission, particulars should be furnished in the proforma prescribed.

61. Consultation with Anti-Corruption Bureau

The Supreme Court held in the case of State of Assam vs. Mahendra Kumar Das, AIR 1970 SC 1255, that the inquiry is not vitiated if consultations are held with the Anti-Corruption Branch, if the material collected behind the back of the charged officer is not taken into account and the inquiry officer is not influenced.

62. Inquiry Report etc, furnishing of copy to ACB

Government decided that a copy of the inquiry report along with the order of the disciplinary authority on the inquiry report in cases where the inquiry has been instituted based on the report of the ACB, should be furnished to ACB and that it is not necessary to furnish the whole record of disciplinary proceedings, that the ACB should not reopen or review the action taken by the disciplinary authority and they can be utilised only for internal analysis and record. (G.O.Rt.No.977 G.A. (Spl.B) Dept. dt. 26-2-2003)

The order made by the disciplinary authority will be communicated to the Government servant together with:

(a) a copy of the report of the Inquiry Officer;

(b) a statement of findings of the disciplinary authority on the inquiry officer's report together with brief reasons for its disagreeement, if any, with the findings of the Inquiry Officer;

(d) 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 Public Service Commission a brief statement of the reasons for such non-acceptance.

A copy of the order will be sent to:

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

(ii) the Public Service Commission in cases in which they had been consulted;

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

(iv) the Anti-Corruption Bureau in cases investigated by the Anti-Corruption Bureau.

63. Special Provisions of procedure

The procedure required to be followed in the normal course for imposition of major penalties on Government servants under rules 20 and 21 of the AP CS (CCA) Rules, 1991 is dealt with above. There are certain special provisions of procedure laid down under the said rules to cater to developing situations and they are dealt with below.

64. Ex parte inquiry

Where 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 disciplinary authority or otherwise fails or refuses to comply with the provisions of rule 20 of the CCA Rules, the disciplinary authority may decide to hold the inquiry ex parte or if it considers it necessary so to do, appoint an inquiring authority for the purpose.

Occasions may arise when the charged Government servant fails, omits or refuses to be present during the inquiry proceedings despite proper notice to him. Under such circumstances the inquiry officer is left with no alternative but to hold the proceedings ex parte in the absence of the Government servant. Where the proceedings are held ex parte, the inquiry officer should record the reasons why he is proceeding ex parte.

In ex parte proceedings, the inquiry will have to be held, ie. witnesses and documents should be produced and evidence recorded as in the normal course. Notice of each hearing should be sent to the Government servant and he is at liberty to take part in the inquiry at any stage of the proceedings. If he has not attended the inquiry at a particular stage, it does not take away his right to attend the inquiry at any subsequent stage.

It shall not be necessary to recall witnesses examined in his absence or repeat the proceedings conducted ex parte already lawfully..

The practice of granting adjournments routinely should be given up and resort had to ex parte proceedings in deserving cases. Judicious application of the provision will have a salutary effect in speeding up proceedings.

In the case of U.R. Bhatt vs Union of India, AIR 1962 SC 1344, the Spreme Court held that when the appellant declined to take part in the proceedings and remained absent, it is open to the Inquiry Officer to proceed on the materials which were placed before him. When the Inquiry Officer had afforded to the public servant an opportunity to remain present and to make his defenee, but because of the conduct of the appellant in declining to participate in the inquiry, all the witnesses of the State who could have been examined in support of their case were not examined viva voce, the Inquiry Officer was justified in proceeding upon the materials placed before him

It may be noted that delivery of the articles of charge to the Government servant is a pre-condition to invoking the provision of ex parte proceedings, as metioned under sub-rule (6) of rule 20.

65. Change of Inquiring Authority

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 interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses.

As such, in the event of a change in the inquiry officer, it is not necessary to start the inquiry afresh.

66. Where Disciplinary Authority is not competent

A disciplinary authority competent to impose any of the penalties on a Government servant can institute disciplinary proceedings against any such Government servant and a disciplinary authority competent to impose any of the minor penalties may institute proceedings for the imposition of any of the major penalties notwithstanding that such disciplinary authority is not competent to impose any of the major penalties as per Rule 19 of the CCA Rules.

In this regard there is a matching provision under sub-rule (16) of Rule 20 of the CCA Rules that where a disciplinary authority competent to impose any of the penalties specified in clauses. (i) to (v) of rule 9 and rule 10 but not competent to impose any of the penalties specified in clauses. (vi) to (x) of rule 9, 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. (vi) to (x) of rule 9 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.

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 witnesses and examine, cross-examine and re-examine the witnesses and may impose on the Government servant such penalty as it may deem fit in accordance with the Rules.

This provision meets the legal requirement in the event of such a situation developing of a disciplinary authority competent to impose a minor penalty alone instituting proceedings for imposition of a major penalty due to unforeseen circumstances but it may not be treated as accepted procedure, for administrative considerations.

67. Higher authority which instituted proceedings alone competent to impose even a minor penalty

If the disciplinary proceedings have been instituted by a higher authority competent to impose a major penalty and on receipt of the report of the Inquiry Officer, 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 a lower disciplinary authority though it may be competent to impose a minor penalty.

68. Common Proceedings

Where two or more Government servants are concerned in any case, the Government or any other authority competent to impose the penalty of dismissal

from service on all the Government servants may make an order directing that disciplinary action against all of them be taken in a common proceedings under rule 24 of the CCA Rules. 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. The 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 instituted for a major penalty or a minor penalty.

Common proceedings cannot be instituted if one of the Government servants involved has retired from service. Proceedings against the retired person will have to be held under rule 9 of the Andhra Pradesh Revised Pension Rules, 1980 and against the persons in service in terms of rule 24 of the CCA Rules. Th e oral inquiry against them in such a case should be entrusted to the same Inquiring Authority. Common proceedings when once commenced can however be continued even if one of the persons retires from service in the course of the proceedings. The proceedings will have to be suspended if one of them dies or is dismissed or removed or compulsorily retired from service.

In the case of Vijay Kumar Nigam vs State of ,MP, 1997(1) SLR SC 17, the Supreme Court held that taking into account the statement of the co-charged official in common proceedings in adjudging misconduct, is not objectionable.

A common proceedings against the accused and accuser is an irregularity and should be avoided.

There may be cases where two or more persons concerned therein are governed by different disciplinary rules. In such cases, proceedings will have to be instituted separately in accordance with the respective Rules applicable to each one of them and such public servants cannot be dealt with in a common proceedings. However, it will still be advantageous, if the inquires are entrusted to the same inquiry officer.

Where two or more Government servants are involved in a case, it should be the endeavour to deal with them in a common proceedings as the advantages are innumerable.

69. Time limits

The CCA Rules fixed time limits .for various stages of action; for instance 10 working days is the time-limit for appearance of the charged Government servant and submission of his statement of defence, under sub-rule (4) of rule 20. These time-limits are not observed, not even taken note of.

The proceedings should be conducted as per the time schedule, granting extensions of time only where justified. Where the charged official fails to comply with the requirements without valid reasons, the disciplinary authority/inquiry officer may pass over to the next stage.

But abnormal delays, in fact, take place on the part of the disciplinary authorities themselves from the stage of institution of the proceedings, in framing of charges, securing documents and the like.. The disciplinary authority/Inquiry officer should feel responsible and pay adequate attention and take timely action. .

70. Related issues of disciplinary proceedings

The following are some related issues having a bearing on disciplinary proceedings.

71. Evidence Act

The provisions of the Indian Evidence Act and the Criminal Procedure Code are not applicable to the departmental enquiries. The spirit of these enactments should, however, be followed in departmental enquiries. The Inquiry Officer should afford reasonable opportunity to both sides to present their respective cases including full opportunity for cross-examining witnesses..

72. Principles of Natural Justice

The following are the two important basic Principles of Natural Justice:

(i) No one can be a judge in his own cause

(ii) Hear the other side.

The first principle means that the disciplinary authority and the inquiring authority should be free from bias. The second principle stipulates that the charged official should be given a reasonable opportunity of being heard.and this operates throughout the proceedings from the beginning to the end.

73. Standard of proof

The standard of proof required in a departmental oral inquiry differs materially from the standard of proof required in a criminal trial. The Supreme Court has given clear rulings to that effect that a disciplinary proceedings is not a criminal trial and that the standard of proof required in a disciplinary inquiry is that of preponderance of probability and not proof beyond reasonable doubt, which is the proof required in a criminal trial. (Union of India vs. Sardar Bahadur, 1972 SLR SC 355; State of A.P. vs. Sree Rama Rao AIR 1963 SC 1723 and Nand Kishore Prasad vs. State of Bihar, 1978(2) SLR SC 46)

Thus, material found not sufficient for proof in a criminal trial can be held sufficient in a departmental proceeding, .and consequently a fact which is not proved in a criminal trial may be held proved in departmental proceedings.

The departmental authorities, if the inquiry is properly held, are the sole judge of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the constitution. (State of AP vs S. Sreerama Rao AIR 1963 SC 1723).

The Supreme Court held, in the case of Union of India vs Harjeet Singh Sandhu, 2002(1) SLJ SC 1, that if two views are possible, court shall not interfere by substituting its own satisfaction or opinion for the satisfaction or opinion of the authority exercising the power, in judicial review.

The Supreme Court held in the case of B.C. Chaturvedi vs Union of India, 1995(6) SCC 749, that the power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. The disciplinary authority is the sole judge of facts. The Court/Tribunal in its power of review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence.

74. Order passed by Inquiry Officer not appealable

An order passed by the Inquiry Officer on any issue in the course of the inquiry, any order of an interlocutory nature or of the nature of a step-in-aid of the final disposal of a disciplinary proceedings, is not appealable as specifically provided in the CCA Rules and hence the question of granting an adjournment on account of going in appeal against such an order, does not arise.

However, when bias is alleged, inquiry officer should stay the proceedings and await orders of the competent authority, as bias is alleged against him and his deciding the issue himself would amount to his being a judge in his own cause.

75. Adjournments

An adjournment may be granted where there are weighty reasons and the inquiry officer is satisfied about the genuineness and bona fides of the request. The charged official has no right to an adjournment as a matter of course. The inquiry officer may pass over to the next stage and consider proceeding ex parte in case of default by the charged official.without valid reason.

76. Stay by Court

Proceedings need not be adjourned or stayed in the following circumstances—

(i) on receipt of a notice under sec. 80 of the Civil Procedure Code;

(ii) on receipt of intimation that the impugned officer proposes to file a writ petition;

(iii) on receipt of a mere show cause notice (or rule nisi) from a court asking --

  (a) why the petition should not be admitted; or

  (b) why the proceeding pending before disciplinary authority/inquiring authority should not be stayed; or

  (c) why the writ or an order should not be issued.

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

No disciplinary proceedings, however, should be started subsequent to the initiation of the court proceedings, if they have the effect of deterring or intimidating the petitioner from proceeding with the court case.

77. Further inquiry, where order set aside on technical grounds

Where the order of the court setting aside the order of the disciplinary authority imposing a penalty is on merits on consideration of facts, it is binding and should be complied with unless it is taken up in appeal to a higher forum. But when the court has passed the order purely on technical grounds without going into the merits of the case, it is open to the competent authority on a consideration of the circumstances of the case to hold a further inquiry against the official on the allegations on which the penalty was originally imposed and rectify the procedural lapses and comply with the requirements and pass a proper order. Same is the position where the order of the disciplinary authority is set aside by the departmental appellate authority. The provisions of deemed suspension under sub-rules (3), (4) of rule 8 of the CCA Rules bear this out

78. Fresh Inquiry, in case proceedings are quashed by court on technical grounds

The Supreme Court held, in the case of Devendra Pratap Narain Rai Sharma vs State of Uttar Pradesh, AIR 1962 SC 1334, that where departmental proceedings are quashed by civil court on technical ground of irregularity in procedure and where merits of the charge were never investigated, fresh departmental inquiry can be held on same facts.

79. Procedural defect after conclusion of Oral Inquiry-- Fresh proceedings from the stage of defect

If the oral inquiry has been held properly, a defect in the subsequent proceedings will not necessarily affect the validity of the oral inquiry Where the order of dismissal was set aside on the ground that it was made by an authority subordinate to the competent authority in contravention of Art. 311 of the Constitution, fresh proceedings could be restarted from the stage at which the oral inquiry ended.

80. Role of Disciplinary Authority, the sole judge

In a departmental action, the disciplinary authority is the sole judge and he is in the picture throughout from the beginning to the end. The disciplinary authority verifies the allegation by conducting a preliminary enquiry himself or getting it done, decides on instituting disciplinary proceedings, frames charges against the Government servant, considers the statement of defence and decides to hold an inquiry and conducts a regular inquiry or gets it done by appointing an Inquiry Officer for the purpose and appoints a Presenting Officer to present the case in support of the charges on his behalf and the Presenting Officer examines witnesses in support of the charges on behalf of the disciplinary authority, obtains representation of the charged Government servant on the inquiry report and finally arrives at a finding of guilty even in disagreement with the finding of the Inquiring Authority and imposes a penalty. The disciplinary proceedings are thus entirely different from a criminal trial, where the prosecuting authority appears before a neutral third-party Judge or Magistrate.

81. Action against Disciplinary Authority for lapses in conducting proceedings

Government decided that in all cases where the circumstances leading to a Government servant's reinstatement reveal that the authority which terminated his services, either willfully or through gross negligence, failed to observe proper procedure as laid down in the CCA Rules, before terminating his service, proceedings should be instituted against such authority under rule 20 and the question of recovering from such authority the whole or part of the pecuniary loss arising from the reinstatement of the Government servant should be considered. (Memorandum No.380/65-1 G.A. (Ser.C) Dept., dated 24-02-1965)

The High Court of Rajastan held, in the case of Dwarakachand vs State of Rajasthan, AIR 1958 RAJ 38, that if a superior officer holds the inquiry in a very slipshod manner or dishonestly, the State can certainly take action against the superior officer and in an extreme case even dismiss him for his dishonesty.

The Central Administrative Tribunal, Madras, in the case of S. Venkatesan vs Union of India, 1999(2) SLJ CAT MAD 492, held that disciplinary authority can be proceeded against in disciplinary action for misconduct of imposing a lenient penalty.

Government ordered that cases relating to corruption are to be dealt with swiftly, promptly without delay and the appropriate authorities should find out and deal with the persons responsible as and when delay is found to have been caused during the inquiry. (G.O.Rt.No.1699 G.A. (Spl.C) Dept., dated 15-04-2003)

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Date.30.04.2004

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