

# **TS/AP Civil Services CCA rules 1991.**

**BY-**

**K. Prabhakar**

**Dy. Director (sw) Retd.**

**Need of Training:**  
**Procedural irregularities to be eliminated:**

the disciplinary inquiry is a highly technical affair and affording of reasonable opportunities in the essence of it.

But the inquiring officers are not specially trained for the purpose, with the result that many technical irregularities are creeping into the disciplinary inquiry thus resulting in a challenge to a Court of Law to the consequential action.

The short coming can be remedied if only officers are trained in the Law of services in general and disciplinary inquiries in particular.

# TS/AP Civil Services CCA rules 1991

- Contains 46 Rules:
- 2 Schedules
- 4 Appendices
- Schedule I- State Services
- Schedule II – Subordinate Services
- Appendix I – General Subordinate Services
- II – Authorities imposing minor penalties
- III - Authorities imposing minor & major
- penalties against Subordinate
- Officers.
- Authorities in respect of Police Etc...

# TS/AP Civil Services CCA rules 1991.

Why disciplinary proceedings are inducted in administration?

A: Discipline means orderly behavior, i.e.. Voluntary willingness of employees for compliance of Rules , regulations and instructions given by the Government for their employees.

It is a tool used by the administration to impose or to enforce appropriate behavior and conduct to ensure harmony and to increase productivity/services/safety and security in the work place/office or organization.

1) To eliminate improper behavior/conduct among Government employees.

2) To create win-win situation among subordinates and management functionaries.

Note: Employer can take disciplinary action against employees; But not to take vengeance against them.

Punishments are threefold:

It is intended to make Government servant to suffer for his misconduct/mischief in Government service.

It is also intended to work as deterrent to other employees in the office/ organization.

In addition to the above, it is also intended to Recover the loss caused by the Government Servant due to his negligence or mishandling of things by them, in addition to the punishment proposed.

# TS/AP civil services CCA Rules 1991

- Origin :-
- Articles 309- COI empowers Governor to make rules.
- Article 310- pleasure theory.
- Article 311 - (a) No removal /dismissal without competent authority.  
(b) Reasonable opportunity being heard will be given to a G.S .
- Article -312 –All India Services .

There is no yard stick prescribed to award punishment to Govt. servants under CCA rules.

The penalty should be proportionate to the gravity of misconduct or crime .

The Disciplinary Authority should act like a judge in discharge of his duties.

Action of DA should be based on just and sufficient grounds only .

Punishments should be imposed only on good and reasonable grounds .

The Inquiry Authority/DA should be with open mind and unbiased.



- DA/IA should provide reasonable opportunity at all levels in the disciplinary proceedings to the G.s.
- Double jeopardy is applicable under CCA rules.
- Procedure prescribed by rules and principles of natural justice should go hand in hand throughout the course of disciplinary case .
- All actions of DA are subject to judicial review.
- Whenever the DA rejected the inquiry report he should state cogent reasons for his disagreement.
- Violations of Code of Conduct Rules or other codes will attract disciplinary actions.
- Without appointment of IA there is no chance for DA to impose major penalty under these Rules.
- The DA cannot change the IA according to his whims and fancies'.

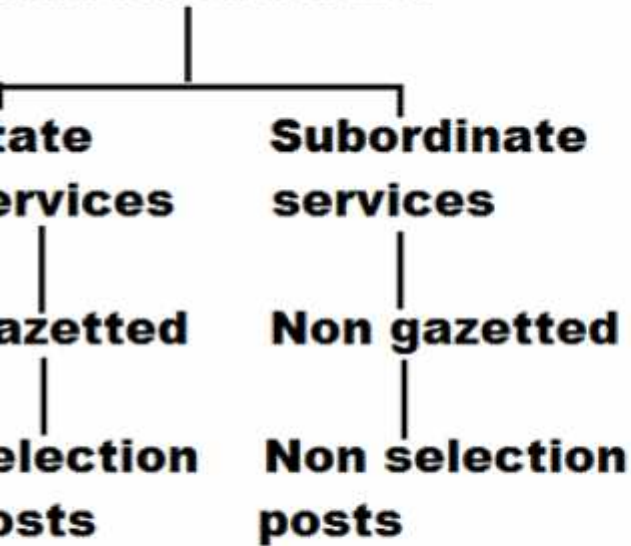
## Note:

Procedure laid down in the rules and principles of natural justice should go hand in hand throughout the disciplinary cases; otherwise the case will be vitiated in the Court of Law.

The Govt. has prescribed all relevant formats for suspension, revocation, charge, punishment etc. Under C.C.A rules 1991. the relevant formats must be used, otherwise the disciplinary cases will be vitiated in the A.P.A.T./ Courts.

# TS/AP Civil Services rules 1991

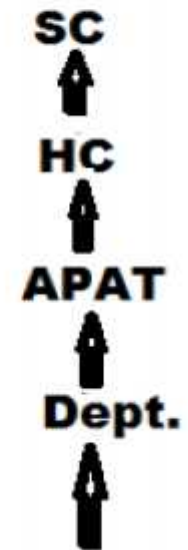
## Classification



## Control



## Appeal rules 1991



1.LGS Appendix i, 2.Forest Gaurds, 3.A.P Police, 4.A.P Spl. Armed Police, Firemen of fire dept.for 15 days suspension & fines

**Complaint:**

Public petitions, news items, TV scrolls, inspection reports, internal audit reports, surprise checks by ACB/Vigilance/and other sources of information.

Study and analyze the complaint by DA/CA.

Point out that all facts need to be verified.

Arrange inspections if necessary.

Identify the required evidence relating to the complaint.

Point out the documents/persons who will provide necessary information and evidence on the matters raised by the complainant.

When the surprise check is involved, carry out without delay.

Ask the complainant to provide any additional information available with him.

Talk to the informers if they got firsthand information.

Based on the above and other relevant points noted in recording imputations basing on the complaints and entrust preliminary enquiry officers to gather relevant material to sustain the charges.

After collecting the information, the veracity of the complaint and preliminary enquiry is to be matched

# PRELIMINARY ENQUIRY OFFICER

PEO should be a senior officer over the government servant.

He should be conversant with CCA rule 1991.

He should apply skill/tactics to elicit information from public as well as complainant.

He should provide useful witnesses to come forward to help in the proceedings.

There is no bar for PEO to interrogate the GS also or even ex-parte.

PEO should also be conversant with conduct rules, financial codes and other relevant codes applicable for GS.

Imagination, tenancy relevant procedures, regulations and also found eye witness if any.

Immediately seize all the connected registers and records and protect them from being tampered.

# IMPUTATIONS OF MISCONDUCT

Sustenance of imputations of misconduct or misbehavior into distinct charges by the DA.

- What are imputations?
- Should deal with each article of charge separately.
- Precise and categorical recitation of relevant and ` specific omissions or commissions.
- There should not be vague or open-ended statements.
- No reference to be made about PE or investigation or
- Internal observations on file, CVC, ACB, EC advice (or) general conduct (or) e-petition.

## **DOCUMENTARY EVIDENCE:**

Evidentiary value of relevant, provable and reliable to be secure.

A. Confirming to the articles of charge and imputations there too.

B. Support the particulars of given allegations such as Figures, dates, names and timings etc.

## **WITNESSES:**

Recording of witnesses from the public having direct bearings on the allegation levelled against GS

- a. Capable of authenticating the documents to be relied upon
- b. They should withstand in the cross examination

NOTE: CHARGES SHOULD BE PICKED UP FROM THE IMPUTATIONS AFTER THE DISCIPLINARY AUTHORITY FULLY SATISFIED THAT THE PROPOSED CHARGES SHOULD BE SUSTAINED IN THE INQUIRY/JUDICIAL REVIEW.

## DISCIPLINARY AUTHORITY DONT'S

1. Let of with a warning/to be more careful in future/a lenient view was taken all this type of things should not be passed while issuing final orders of the disciplinary case.
2. GOMS No 680 GAD services C Department, Dated 1.11.2008, against any government servants while filing charges. That is slack supervision/ not processing files properly should not be mentioned in the charge memo.
3. Government servants are not supposed to charge recklessly
4. Disciplinary action should not be taken on flimsy grounds
5. The authorities should instill confidence of the employees and to work without fear
6. Under no circumstances the CA should keep an employee under suspension more than 6 months without framing articles of charges (Now it has been reduced to 3 months by the honorable Supreme Court).
7. Mere fact that the government servant has been granted bail doesn't give him the right to be restored to duty immediately.
8. Humiliation and harassment against any government servant should not be warranted.
9. Consolidated instructions on misappropriations of government money wide GOMS No 25 GAD services C dated 3.2.2004 (This should be well acquainted with by all the disciplinary authorities or competent authority)



# Charge

1. After preliminary verification DA will frame charges against G.S. (but it is a must)
2. It should be drafted in prescribed format (II in GOMS no 82 GA service C 1.03.1996)
3. Charge should have basis. (petition, inspection report, audit report, misappropriation, embezzlement of cash etc)
4. Place, time, date and year of misconduct done should be specified.
5. Violation of code of conduct rule should be mentioned.
6. Violation of administrative /financial lapses or other codes in vogue.
7. List of documentary evidence.
8. List of witness. (recorded for the purpose)

# Charge how it should be?

1. **Prima facie proven essence of allegation.**
2. **Language should be brief, clear, precise and unambiguous and free from vagueness.**
3. **Separate charge for each misconduct be mentioned.**
4. **Should not contain expression of opinion of the D.A.**
5. **Should not be the other charge which was already adjudicated**
6. **Preferably in third person**
7. **Avoid multiplication of charges.**
8. **If its issue is delayed and issue without any justification.**

## 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 defense.
- 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

## **Minor punishment rule 9 (I to v) With or Without Inquiry.**

- I. Censure: Promotion will be stopped for one year.**
- II. With holding of promotion: Period should be mentioned in the orders.**
- III. Omitted.**
- IV. With holding increment without cumulative effect (not exceeding 3 years).**
- v.(a)Suspension: Where he was already suspended.**
- v.(b)Reduction to a lower stage in time scale not exceeding three years. (not adversely effect for pension)**

# Major penalties(rule 9 vi-x)

**VI. With holding increment with cumulative effect.**

**VII. Lower stage of time scale, grade, post or service.**

**VIII. Compulsory retirement.**

**IX. Removal.**

**X. Dismissal.**

➤ **There is no chance for the DA to impose Major punishment without conducting Inquiry.**

Major penalty, rule no 20 CCA rule's 1991 re-casted in GO. MS No. 383 GA Services C Dated 19/12/2003 and later drastically amended as per GO. MS. 337 GA service © dated 22/07/2006

- 1. After confirmation of preliminary verification D.A: frame charges against G.S.**
- 2. Explanation by the G.S within : 10 days.**
- 3. D.A should hear the G.S at the time of defence statement.**
- 4. DA should obtain the signature of the Govt. servant on, how may of charges agreed or denied.**
- 5. The DA should ask whether any documents required for G.S. if so, he will send them to I.A. during the course of Inquiry.**

- 6. Inquiry Officer/Presenting officer will be appointed by D.A(both should be senior officers over G.S.)**
- 7. D.A will ask the GS to choose defence Asst.**
- 8. On the opening of Inquiry day fixed at place & time of conducting Inquiry by I.A, he will inform P.O and G.S.**
- 9. G.S. after the verification of documents he will attend for regular Inquiry along with P.O.**
- 10. The I.A will hear the case and draw up a program to complete the Inquiry within 2 or 3 days.**

- 11. On the day of Inquiry the I.A starts Inquiry with the presentation of the case by P.O.**
- 12. Then G.S is allowed for cross examination the P.O.**
- 13. The P.O will reexamine the case before the I.A.**
- 14. Basing on the examination cross examination and reexamination of witness and documents by the P.O. and G.S. prepare the list charges proved or not proved basing on the reasons and evidence.**
- 15. I.A. submits its report on Inquiry to the D.A.**
- 16. G.S. & defence Asst. will answer the P.O. suitably to the written briefs.**
- 17. D.A. will supply Inquiry report to the G.s to file his defence statement if any within 15 days .**
- 18. D.A. will conclude Inquiry after obtaining approval vigilance & A.P.P.S.C, and issue final orders of major punishment.**
- 19. Appeal / revision / review can be taken up at the dept. level.**
- 20. If aggrieved the G.S. can approach A.P.A.T / H.C / S.C.**



# **Borrowed and lent officers (CCA Rules 1991)**

What are the powers of an Authority to deal with misconduct committed by employ who has been borrowed from another organization.

Borrowing Authority shall have powers of Appointing Authority for the purpose of placing the delinquent employ under suspension.

The details of the case shall be intimated to the lending Authority.

Can the Borrowing Authority initiate disciplinary proceedings?

(Borrowing Authority can initiate disciplinary proceedings.)

But the powers for Imposition of penalty depend upon the nature of the case.

What are the provisions regarding imposition of penalty in respect of GS I  
one department to another ?

As stated above the Borrowing Authority can initiate disciplinary proceedings  
against the borrowed official

At the end of the proceedings, if it is felt appropriate to impose minor  
penalty, the Borrowing Authority may do so after consulting the Lending  
department

In case there is any difference of opinion between the 2 departments,  
employment shall be reverted back to the parent department.

. in conclusion of the proceedings, the Borrowing Authority is of the opinion that a major penalty need to be imposed, the employ may be Repatriated to the parent department.

s the disciplinary Authority in the parent department bound by the findings of in the disciplinary proceedings conducted by the Borrowing Department?

Ans: NO. Explanation under Rule No 20 of CCA Rules clarifies that the disciplinary Authority is empowered to hold further inquiry as it deems necessary.

BRIEFLY, WHAT ARE THE POWERS OF BORROWING AUTHORITY AND LENDING AUTHORITIES?

## POWERS OF THE BORROWING AUTHORITY:

- . It can suspend –report the matter to the parent department.
- . It can initiate disciplinary proceedings.
- . It can impose minor penalty subject to the consent of the parent department.
- . It will have repatriate the employ if it is of the opinion that major penalty required to be imposed.
- . Findings of the inquiry conducted by the Borrowing Authority are not binding on the Lending Authority.
- . Lending Authority is at liberty to conduct further inquiry as deemed necessary

## Standard proof required in domestic inquiry and in criminal trial.

<b>Domestic inquiry</b>		<b>Criminal trial</b>
Pre-ponderance of probabaility	1	Proof beyond the reasonable doubt
Quasi-Judicial inquiry	2	Pucca Judicial proceedings
Misconduct / Misbehaviour in official duties	3	Offences committed against State /Law
Punishments will be imposed as per Rule No 9 (I to X) in CCA Rules	4	Punishments will be given as per the prescribed procedure laid down in Law, Rules
Evedece Act is not applicable	5	Evidence Act is totally applicable
Hear say evidence is admissible	6	Hear say admissible is not applicable
Some evidences is necessary	7	Total evidences is required
Cr.Pc is not applicable	8	Cr. Pc is applicable
Reasons and findngs are on admissable in common paralance	9	Reasoms and findings should be strictly in logical frame work

## **SPEAKING ORDERS:-**

Final Orders are speaking orders and are free from ambiguity or vagueness.

An order which contain not only the conclusions and directions but also the reasons that have lead to conclusions.

### **Essential Ingredients of Speaking order:-**

**Context:-** The order the narrate the background of the case. The circumstances that have caused the issues of the orders have to be brought out clearly in the introductory portion of the order.

Contention:- Rival submissions by different parties, where ever applicable must be brought out in the order.

Consideration:- The order should explicitly evaluate the submissions made by the parties vis-à-vis each other in the light of relevant statutory provision.

Conclusion:- Outcome of the consideration is ultimate purpose of the order. It should be ensured that each conclusion arrived at the order must rest on **FACTS** and **LAW**.

## **Importance of prescribed formats in disciplinary cases in accordance with CCA Rules – 1991:**

Certain important instructions for Competent Authorities on prescribed formats:

1. Forms prescribed for issue of orders by Competent Authorities are meant the basic requirements to protect a disciplinary case not be vitiated in the court of Law during judicial review.
2. They are not be adapted mechanically; but adapt suitably considering the facts and circumstances of the case.
3. Extraneous expressions like “draft” “specimen” should be avoided.
4. No reference should be made to the ACB, the vigilance Commission or such others or to any correspondence with them in the body of order or outside of it.



5. **Order should be issued by the CA under his signature only. When Government are the CA the order should be expressed “ By Order in the name of Governor of TS/AP as the case may be, it should be signed by an Authorised Officer.**
6. **The related rules and regulations etc...should be gone through to satisfy the requirements of the provisions are met.**
7. **If the orders issues are defective and not in corrective format such orders are liable to be challenged in the courts merely on **TECHNICAL GROUNDS**.**

**With a view of avoiding such situations and bring uniformity in forms of orders having regard to the provisions considered in TS/AP CS CCA Rules – 1991. It has been considered desirable in prescribed model formats of orders for the guidance of CA’s who are empowered to such orders in disciplinary cases.**

**Note: Accordingly Government direct all CA’s to issue such orders considering of relevant proformas vide G.O.MS. NO 487, GAD, (Ser. C Dept), Dated: 14-09-1992.**

The High Court of Rajasthan 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.

### Importance of Procedure, in Disciplinary 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.

- 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.

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.

## 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 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.



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## 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.

## 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 misbehavior in support of each article of charge, which shall contain
  - (a) a statement of all relevant facts including any admission or confession made by the Government servant;
  - (b) a list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained,

**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

## Serving of charge sheet

The drawing up and delivery of the charge sheet is a significant landmark 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.

## Articles of charge

- (i) Allegation should be avoided. Article of charge is the prima facie proven essence of the allegation
- (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 should be avoided.

## 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/behavior expected or the rule violated.

## 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.



## 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.

## 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 defense 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

### **Action on receipt of statement of defense**

- On the date fixed for appearance, the Government servant shall submit the written statement of his defense.
- On a consideration of the statement of defense 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 defense.
  - (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 defense 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 defense and fulfillment of the other tasks assigned to him.

### Where the Charged Government servant pleads guilty

- The disciplinary authority shall ask the Government servant whether he is guilty or has any defense 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.

### 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.

## Defense 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 finalize the selection of his defense assistant before the commencement of the proceedings and adjourn the case to a date not exceeding five days for the said purpose.

## Defense Documents

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 defense indicating the relevance of the documents so required.



### 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.

## 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.

- The disciplinary authority cannot remit the case for further inquiry for the reason that the inquiry report has gone in favor 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

## Disciplinary Authority

- 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

### 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.
- “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.

### 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.

### 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.



## 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.

## 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.

## 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**

### **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 defense 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.

## 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.

- 70. Related issues of disciplinary proceedings

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

- **71. Evidence Act**

- **72. Principles of Natural Justice**

- **73. Standard of proof**

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

## TERMINATION –OF CONTRACT SERVICE

Termination of contract service by due process of a NOTICE does not attract the provisions of Article 311(2) of Constitution of India.

The period of contract should be mentioned specifically

Terms and conditions of the contracts should be carefully in corporate

The NOTICE should be served to the concerned employ well in advance as per the Legal requirements

If there is any Legal format prescribed, it should be adapted carefully

Better obtain Legal opinion from the Authorized counsel.

The competent Authority only sign after careful verification.

( See *Prakash Chandra Anand v/s Union of India* )

( AIR 1953 SC 250.



## TERMINATION-OF CONTRACTUAL SERVICES

No distinction between termination under the terms of a contract and termination in accordance with the conditions of services, and such termination does not amount to DISMISSAL or removal attracting Art 311 of the Constitution

Termination of the services of an employ does not amount to in all cases of dismissal or removal

In the case of a person employed in a temporary capacity/probation and where whose services come to an end according to the conditions of the service contained in rules, be a ONE MONTH NOTICE, in order to make sufficient use of opportunities

**NOTICE ( SUFFICIENT NOTICE IS MANDATORY AS PER THE TERMS AND CONDITONS OF T**

**CONTRACT)**

the Honorable Supreme Court of India that the provisions of CCA rules should not be adapted

for this purpose. Simply issue a notice without any attributions on character/conduct of

the employ in question. In such a case Art 311 has no application here and no question

of discrimination arises of LAW, whose protection the employee seeks have no application

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## TERMINATING OF SERVICES OF A PROBATIONER

Services of probationer or temporary employee can be terminated by invoking the terms of appointment or temporary service rules applicable in all such cases.

As is known as discharge SIMPLICITER, normally the rule would be to provide with a notice of the period or in lieu of NOTICE PERIOD.

This must be complied with two precautions must be ensured under above circumstances

The provisions of contract, length of notice period and the conditions prescribed by FR 5 (J)

The order of discharge must not cast any stigma on the character and conduct of the employee

The order should not any mention of any deficiency on the part of the employee

Discharge of probationer from service as being UNSUITABLE to the post on grounds of notoriety for corruption and unsatisfactory work

The question was whether the provisions of Art 311 of COI or attracted to the case where a public servant who was still a probationer and had not been confirmed in a substantive post. The probationer who had been discharged from service on inquiry as being UNSUITABLE for the post on grounds of notoriety for corruption and unsatisfied work in performing in duties. It was argued on behalf of the Appellant that the respondent, being a probationer could be discharged without any inquiry into the conduct being made and his discharge could not be treated as punishment.

The following proposals are made it clear:

services are temporary or probationer can be terminated under rules of employment and such termination without anything more would not attract Art 311.

Discharge him/her without any stigma attributed to them.

Issuing the charge sheet, call for explanation should be totally avoided

If any employee to allow to continue on completion of maximum period of probation and under this rules cannot be deemed to be a probationer and therefore it will attract Art 311.

The employee cannot be deemed to continue in the post by IMPLICATION.

The employee allowed to continue in the post on completion of maximum period of probation. The employee even though subsequently removed by the APPOINTING AUTHORITY from service by giving one month notice without holding an inquiry then it should be in attraction Art 311

Since the impugned order was invalid.

## **TERMINATION OF PROBATIONER /TEMPORARY EMPLOYEE**

After assessment of nature of performance but the limited purpose of determining suitability does not attract Art 311 COI.

(ONGC v/s Dr.Md.ISKANDER ALI 1980 (2) SLR SC 792 .

## **APPOINTING AUTHORITY**

He did not consider to continue inquiry as decided to terminate the services.

Note: It is well settled by a many decisions the Supreme Court in the case of probationer/a temporary employee has no right to the post. **SUCH TERMINATION IS VALID.**

## TERMINATION OF PROBATIONER

Services of a probationer can be terminated taking into consideration overall performance, and any complaint can be looked into for assessment of performance.

The COMPETENT AUTHORITY to look into any complaint for the purpose of making assessment of the performance of such employee.

The supreme court of India has upheld the order of termination holding that the decision was taken by the Governing council on the total and overall assessment of performance of the employee.

## **IN TEMPORARY SERVICES**

Any appointment orders issued in Government will be issued as purely temporary as per the rules concerned and can be removed at any time without giving any reason and notice there off by the APPONTING AUTHORITY.

After completion of successful probation and also the accidence received from the police.

A purely temporary Government servant will be discharged without much legal formalities .