

DISCIPLINARY PROCEEDINGS

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Safeguards of Article 311- an outline

(1) No dismissal or Removal by authority subordinate to appointing authority.

(2) No dismissal or removal or reduction in rank.

without inquiry in which :-

(i) charge should be communicated to the Government Servant concerned.

(ii) he and she should be given reasonable opportunity of being heard in respect of charges, and

(iii) penalty may be imposed on the basis of evidence adduced during such inquiry.

Exceptions where Inquiry as enjoined under Article 311(2) may be dispensed with

1. Where a person is dismissed or reduced in rank on the ground of **Misconduct which has led to conviction or criminal charges** {clause(a) of Article 311(2)}
2. Where in the **interest of the security of state, it is not expedient** to give such an opportunity to the civil servant {clause(b) of Article 311(2)}
3. Where it is **impracticable to give the civil servant an opportunity to defend himself** but the authority taking action against him shall **record the reasons for such action** {clause(c) of Article 311(2)}

2+1 Basic Principles/Natural Justice

1. *Nemo debet esse iudex in propria causa*:- **NO BIAS**

{No man shall be a judge in his own cause}

LIKELIHOOD OF BIAS (JUSTICE MUST BE SEEN /B
DONE [Judges= Recuse (potential conflict of interest)]

2. *Audi alteram partem* :- HEAR THE OTHER SIDE

{Both sides must be heard} [**No man should be
condemned unheard**]

NOTICE & HEARING

3. Reasoned Decisions= Giving Reasons (DECISIONS)

PRINCIPLES OF NATURAL JUSTICE for **Disciplinary Proceeding**

- No one can be punished without being given reasonable opportunity of being heard.
- No one can be the judge of his own cause &
- Justice is not only done but also seen to have been done.
- Reasoned Decision
- Punishment shall not be Disproportionate

PRINCIPLES OF NATURAL JUSTICE TO BE FOLLOWED IN DEPARTMENTAL INQUIRY

- That a party should have the opportunity of adducing all relevant evidence on which he relies.
- That the evidence of the opponent should be taken in his presence./PE not part of enquiry
- That he should be given the opportunity of cross examining the witnesses examined by the party.
- That no materials should be relied on against him without his being given an opportunity of explaining them.

Minor Penalties –

1. censure;
2. withholding of his promotion
3. ***recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;***
4. reduction to a lower stage in the time-scale of pay by one stage for a period not exceeding three years, ***without cumulative effect and not adversely affecting his pension.***
5. withholding of increments of pay ***(without cumulative effect)***

Major Penalties

1. reduction to lower time-scale of pay, grade, post or Service *(with cumulative effect)*
2. compulsory retirement;
3. removal from service which shall not be a disqualification for future employment under the Government;
4. dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

STEPS - Major Penalty Proceedings

1. COMPLAINT/ NEWS REPORT/AUDIT REPORT
2. PE= DA DOES/or/ Gets Preliminary Enquiry done
3. DA decides whether to initiate Minor Penalty Proceedings or Major Penalty Proceedings
4. Issue of Charge Sheet to the Charged Officer
5. Appoint Inquiry Officer & *Presenting Officer*
6. Inquiry Officer Conducts INQUIRY (DD Oral Hearing)
 - **Preliminary Hearing**
 - **Regular Hearing (MAIN INQUIRY=Chief/Cross/Re)**
7. Decision in INQUIRY REPORT (GUILTY/ NOT GUILTY)
8. Punishment by Disciplinary Authority (DA)
9. APPEAL/REVISION/REVIEW

STEPS - Minor Penalty Proceedings

WITHOUT DETAILED ORAL HEARING

1. COMPLAINT/ NEWS REPORT/AUDIT REPORT
2. PE= DA DOES/or/Gets Preliminary Enquiry done
3. DA decides whether to initiate Minor Penalty Proceedings or Major Penalty Proceedings
4. Memorandum is issued to the employee communicating the proposal to take action against him(W Statement of Imputations of misconduct)
5. REPLY by Charged Officer
6. Decision of whether GUILTY/NOT GUILTY
7. Punishment by Disciplinary Authority (DA)
8. APPEAL/REVISION/REVIEW

MINOR/MAJOR PENALTY PROCEEDINGS

• MINOR

- A. Complaint
- B. Preliminary Enquiry
- C. Memorandum to take action/Statement of Imputations of misconduct
- D. Reply of Charged Officer
- E. DECISION GUILTY/NOT (by DA)
- F. PUNISHMENT BY DA
- G. APPEAL/REVISION/REVIEW

• MAJOR

- A. Complaint
- B. Preliminary Enquiry
- C. Charge Sheet
- D. INQUIRY
 - 1. Preliminary Hearing
 - 2. REGULAR HEARING
- E. DECISION GUILTY/NOT (BY IO)
- F. PUNISHMENT BY AA/DA
- G. APPEAL/REVISION/REVIEW

Sexual Harassment

- Provided that where there is a complaint of sexual harassment within the meaning of rule 3 C of the Central Civil Services (Conduct) Rules, 1964, the complaints Committee established in each ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the complaints committee for holding the inquiry into the complaints of sexual harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules. (INTERNAL COMPLAINTS COMMITTEE/ LOCAL)

EVIDENCE ACT NOT STRICTLY APPLICABLE **TO DISCIPLINARY PROCEEDINGS**

- THE RULES OF EVIDENCE AS FOLLOWED IN JUDICIAL PROCEEDINGS ARE NOT STRICTLY APPLICABLE TO DEPARTMENTAL INQUIRY BEFORE AN INQUIRY OFFICER.
- THE NATURE OF THESE INQUIRIES **IS QUASI-JUDICIAL** AND THESE ARE **NOT GUIDED BY THE LAW OF EVIDENCE AS CONTAINED** UNDER THE EVIDENCE ACT.
- **GUIDANCE TO BE TAKEN ONLY FROM EVIDENCE ACT**

Burden of Proof in Disciplinary

Proceedings//Civil & Criminal cases

1. In criminal cases, the guilt must be *proved beyond reasonable doubt*. In civil cases *proof is enough*.
2. In civil cases, the matter is decided by *preponderance of probabilities*. But in criminal cases proof beyond reasonable doubt
3. Disciplinary Proceedings= *preponderance of probabilities*
4. *Burden of Proof in criminal cases is on prosecution// in civil cases on both parties*

Examination-in-Chief

- It means examination of a witness by the party calling him. In chief examination, the witness generally *speaks in favour of the party examining him as he is called by the party.* In the same way the party or his advocate conducting chief examination *asks plain questions and avoids tricky questions, because it is through such witness he tries to establish the case in his favour.*
- In this examination *only relevant questions can be asked and leading questions cannot be asked.*

Ambit of Examination-in-Chief

- a. It must relate to *relevant facts of the case.*
- b. It is not ordinarily permissible to ask *leading questions* during examination-in-chief. However, leading questions may be asked with the *permission of the court* during examination-in-chief if the leading question is *introductory in nature or relates to undisputed facts* or relates to facts, which in the opinion of the court, are sufficiently proved (Sec.142 of I.E. Act).

Objects of cross examination

- I) to **destroy the general value of the evidence** given by the witness in chief examination
- II) to **bring to light facts suppressed** by the witness, and
- III) to **establish evidence in his favour by means of his opponent's witness**. (to obtain from such witness statements and admissions favourable to the party)
- IV) to **destroy or weaken the case of the opponent by discrediting the witness.**

Ambit of Cross-examination

– following questions may be asked during cross examination:

- a. Any question to test the veracity of the witness (i.e. to test the truthfulness of the testimony);
- b. Any question to know the status of the witness (i.e. to discover who the witness is and what is his position in life);
- c. Any question to check the credibility of the witness **even by injuring his character or exposing him to criminal liability** (i.e. to destroy or weaken the case of the opponent by discrediting the witness (Sec.146 of I.E. Act)).
- d. Leading questions

Re-examination

- The party who calls the witness may re-examine him after cross-examination in order to **reconcile the discrepancies that have arisen during cross-examination.** The object of re-examination is to seek **explanation or clarification from the witnesses on matters,** which arose during cross-examination and may be **unfavourably construed against the party calling the witness.**
- I may make the statement in one sense but the advocate cross-examining me may show that the statement was made in another sense.
- Witness = **novice and a stranger** (may be nervous)
- Advocate = **veteran & seasoned**

Appreciation of Evidence=

Ocular Testimony:

- **Ocular testimony of a witness** may be classified into the following three categories, namely
 1. **Wholly reliable-----**
 2. **Wholly unreliable.**
 3. **Neither wholly reliable nor wholly unreliable.**
- In respect of first and second category, the court should have no difficulty in coming to conclusion either way - ***It is only in the 3rd case that corroboration is required.***

Preliminary Enquiry (PE)

- The point for consideration is 'whether or not there is sufficient ground for proceeding'. In other words, the existence of a "prima facie case" is the pre-requisite for initiation of a departmental disciplinary proceeding.
- For that purpose, a preliminary enquiry may be conducted to find out whether a prima facie case is made out justifying initiation of a formal disciplinary proceeding.

Preliminary Enquiry - its nature:-

- *P.E. is not a must in each and every case*
- *It is fact-finding/It is informal/*
- *Generally, it is ex-parte/May be held confidentially*
- *It is for the satisfaction of the Authority Competent to initiate D.P*
- *There is no prescribed form or procedure for P.E*
- *The person complained against need not be called to take part in P.E.*
- *Preliminary enquiry may be made to ascertain prima-facie truth or otherwise of the allegations/for determining whether a D.P. should be started.*

After P.E. - what?

- a) The Disciplinary Authority should examine whether the P.E. has been properly done.
- b) **If done properly, what misconduct/offence/fault, if any, has been made out prima facie?**
- c) If so, should he lodge an FIR (in case of cognizable offence) with the Police as a **step towards Criminal Prosecution?**
- d) **Should he file a complaint before the Competent Judicial Magistrate (non-cognizable offence) for launching Criminal Prosecution?**
- e) Should he **set the Criminal Law in motion as per (c) or (d) above or embark on a departmental proceeding or take recourse to both simultaneously?**
- f) If Disciplinary Proceeding is called for, should he draw up a proceeding for major penalty or minor penalty?

MINOR PENALTY PROCEEDINGS

- **Rule 16** of CCS(CCA) Rules 1965
- The authority competent to impose these penalties may be lower than the Appointing Authority. Besides, ordinarily Minor penalties can be imposed without conducting an oral inquiry.
- Once a decision has been taken by the disciplinary authority to initiate minor penalty proceedings against an employee, a **memorandum is issued to the employee communicating the proposal to take action against him. This memorandum is accompanied by a statement of imputations of misconduct or misbehaviour**, giving him about 10 days' time for submitting his reply. In case the Government Servant desires to **peruse some documents for preparing his reply, the same may be considered on merit.**

On receipt of his reply

- **On receipt of his reply**, or if **no** reply is received on expiry of the prescribed date, the **competent authority will take a decision on the basis of available information**. The **findings of the disciplinary authority will be recorded in file and an appropriate order will be served on the Government servant concerned**. If it is decided, as a result of such examination, to **exonerate** the Government servant, an order to that effect will be issued.

Detailed Oral Hearing= Optional

- **Optional:** Cases wherein the disciplinary authority may feel that in the circumstances of the case it is appropriate to hold an oral inquiry. The disciplinary authority may suo motto decide that in a particular case, oral inquiry may be held to ascertain as to whether the charges are proved. Alternatively, the decision may be taken based on the request of the concerned official. In any case, the final decision will be as per the discretion of the disciplinary authority. **Cases involving oral evidence will normally call for oral hearing.**

Detailed Oral Hearing=**Obligatory**

- **Obligatory:** Where, the disciplinary authority, after considering the reply of the Government servant, proposes to impose the penalty of withholding of increment, under any one of the following circumstances, an oral inquiry shall invariably be held:
 - i) withholding of increment for a period exceeding three years,
 - ii) withholding of increment for any period with cumulative effect
 - iii) withholding of increment which is likely to adversely affect the pension of the Government servant,

MAJOR PENALTY PROCEEDINGS

- Procedure for imposition of Major penalty is laid down in rule 14 of the CCS (CCA) Rules. Normally, a Major penalty can be imposed only by the Appointing Authority.

Charge-sheet

- Take meticulous care to prepare the charge-sheet.
- Frame one head of charge on the basis of one incident.
- Ensure that each charge is clear, precise and accurate and not vague and indefinite.
- Give all relevant factual details such as, date, time, place, acts of commission or omission etc.
- Mention the Rule allegedly violated.
- Give out the specific name of the offence/fault if it is generally known by that name.
- Don't incorporate either evidence or inference in the charge.

4 Annexures -charge sheet

- Before imposition of major penalty, the disciplinary authority is required to prepare charge sheet which will **have a memorandum (covering)** with the following four annexures:

Annexure – I : Articles of Charge

Annexure – II : Statement of imputations of misconduct or misbehavior

Annexure – III : List of Documentary evidence in support of the charges

Annexure – IV : List of Oral witnesses in support of the charges

Covering Memorandum

- The covering memorandum is required to be signed by the disciplinary authority. In cases wherein the President is the disciplinary authority, the covering memorandum should be signed by an officer authorised to authenticate orders on behalf of the President. Normally, the copies of the documents and the statements of witnesses are supplied along with the Charge Sheet. If the documents are bulky and copies could not be given along with the Charge Sheet, the charged officer may be given an opportunity to inspect the same within a reasonable time, say 10 days.

Annexures-I & II

- Articles of charge as mentioned in **Annexure-I** is the essence of the misconduct of the employee. It may be negligence, or insubordination or lack of integrity, etc. The *details of the facts/transaction from which the charge emanates are known as the Statement of imputations of misconduct or misbehaviour. This will be a detailed account and is given in Annexure-II.*

SITUATIONS

CHARGE-SHEET SERVED UPON THE C.O.

1. He admits the charge wholly.
2. He admits in part and denies in part.
3. He denies the charge totally.
4. He does not respond at all.
5. He demands inspection of documents and applies for copies.

SITUATION - 1 (ADMISSION)

HE ADMITS THE CHARGE WHOLLY.

- A. D.A. find him guilty.
- B. D.A. may inflict such penalty as the circumstances may warrant.
- C. Alternatively, D.A. may take evidence and arrive at a finding whether he is guilty or not.
- D. If found guilty, C.O. is liable to be punished.
- E. D.A. to decide which penalty should be imposed.
- F. D.A. to pronounce the punishment accordingly.

Note: Penalty inflicted must be one of those prescribed under the relevant Services Rules. It should be proportionate to the nature and gravity of the delinquency/default. Aggravating as well as mitigating circumstances, if any, may be taken into account. His/her past conduct/record may be considered.

SITUATION - 2

Charge admitted in part, denied in part

- That part which is admitted, may be handled as indicated in the context of the situation No. 1.
- When a charge or part of it is denied, an enquiry has to be conducted according to the Rules, observing the principles of Natural Justice.

S i t u a t i o n - 3

Total denial of the charge

Actions:-

- **HOLD AN ENQUIRY YOURSELF** (If you are the Disciplinary Authority).

Or

- **CAUSE AN ENQUIRY TO BE MADE**
- **In any case, appoint a Presenting Officer.**

S i t u a t i o n - 4

No response from the C.O.

- Check up carefully whether the charge-sheet has been duly served upon the C.O.
- If you are satisfied about the service of the charge-sheet, his silence should be taken as denial.
- In such event, proceed ex-parte.
- The C.O. may be found guilty only on the basis of evidence.

Situation - 5

- He/She (C.O.) does not file written statement.
- He/She demands inspection of documents.
- He/She applies for copies.

Actions:-

- Consider his/her demand and application objectively and carefully.
- Give him/her reasonable opportunity of preparing for his/her defence.
- Permit him/her take copies of extracts in presence of an officer nominated in his behalf unless.
 - (i) It is irrelevant **(or)**
 - (ii) It is a privileged document
- When the request of the C.O. is turned down, reasons are to be recorded in writing.

Presenting Officer

- Assist the Inquiry Officer during preliminary hearing to sort out the preliminaries;
- Supply the copies of documents in support of the charges and allow inspection of the originals to the charged employee when so directed by the Inquiry Officer.
- Supply copies (in full) of the earlier statements of witnesses mentioned in the list of prosecution witnesses
- Submit his written brief, summing up his case, with a copy to the charged official after all evidence has been recorded in the case. Where the rules permit, he may, with the permission of the Inquiry Officer, argue the case orally.

Preliminary Hearing

In the first hearing, known as the preliminary hearing, the Inquiry Officer will **question the Charged Officer as to whether he has received the Charge Sheet, understood its contents and admits the charges. In case, the Charged Officer admits the charges unconditionally at this stage, the same is recorded and the finding of guilt is sent to the disciplinary authority** duly signed by the Charge Officer. In most of the cases, the Charged Officer **denies the charges. Hence the Inquiry Officer will proceed with further inquiry. On denial of the charges by the Charged Officer, the Inquiry Officer will fix a schedule for inspection of the original documents listed in Annexure – III of the Charge Sheet.** This may be conducted at a date, time and venue suitable to the Presenting Officer and the Charged Officer. **The Inquiry Officer need not be present during the inspection of documents.**

Inquiry- An Outline

- A. I.O. to fix date, time and place for preliminary hearing (P.H.).
- B. I.O. to intimate to the P.O. the date, time and place for P.H.
- C. I.O. to give notice to the C.O. communicating date, time and place for P.H. and ascertaining whether he will defend himself personally or like to be defended by a Defence Assistant of his choice.
- D. On the date fixed for P.H., I.O. may examine the C.O. in person about the charge and his defence.
- E. Arrangement for inspection of documents, if asked for by the C.O.
- F. Summoning of witnesses for examination.

Inquiry- An Outline

- G. Ascertainment of the particulars of the Defence Assistant.
- H. Request to be made to the Controlling Authority of the Defence Assistant (D.A.).
- I. Daily order sheet - all proceedings to be entered there.
- J. Fix date for recording of oral evidence.

K. Examination of PWs

exam - in-chief by the P.O.

Cross-exam by D.A./C.O.

Re-examination, if necessary

Inquiry- An Outline

- L. After the closure of the exam of the PWs, I.O. may invite the attention of the C.O. to incriminating evidence with a view to offering him an opportunity of explaining.
- M. After the closure of the exam. of PWs, I.O. may ask the C.O. to state his defence orally or in writing.

N.Examination of DWs

Exam-in-chief by the D.A./C.O.

Cross-exam by the P.O.

Re-exam, if necessary

- O. Reception of Documents and marking them as exhibits.
- P. I.O. may put question to a witness.

Inquiry- An Outline

Q. Final hearing

Hear the P.O. (Arguments)

Hear the C.O./D.A. (Arguments)

Permit them to file written briefs of their respective case, if they want.

R. C.O. has a right to make oral submissions on his defence.

S. Report of the I.O.

Appreciation of evidence

Finding on each charge

No recommendation on punishment

AFTER INQUIRY

- S. Submission of the report to the D.A. along with all original records
- T. Supply of a copy of the report to the C.O.(BY DA)
This is mandatory.
- U. C.O. may make a representation against the report of I.O.
- V. D.A. to consider the record as a whole including the representation of the C.O.
- W. Decision of the D.A. He should apply his mind to the materials on record.
- X. Imposition of penalty, if the C.O. is found guilty.
- Y. Communication of the order to the C.O.(BY DA)

APPEAL, REVISION AND REVIEW

- Within 45 Days – Authority May Condone//RIGHT
- **REVISION** = Not appealable or No Appeal made
- Includes Appellate Authy// On Own Motion Or Other Wise/// Any Time After Time For Appeal Is Over Or After Disposal Of Appeal
- **REVIEW**= President [New Material]// On Own Motion Or Other Wise// ANY TIME