CHAPTER - 5

Disciplinary Proceedings
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5.1 Concept

Any organisation is established with a distinct and clearly defined purpose for achieving a unique goal of growth. This demands many resources. The primary resources being Man, Money, Material and a combination of Processes performed by the machinery. The most important factor among these is the ‘Man’ who has the ability to think and take decisions. When different kind of people join an organisation as it’s employee with different back grounds with regards to their social life, different mindsets, different thinking processes they apply, they work together as a cohesive force to achieve the organisations goal. It is natural that under theses circumstances, there is always a scope for some conflicts between themselves or otherwise getting raised. To avoid/control any such situation and to mitigate the risk involved, every organisation frames some code of conducts to be followed by all it’s employees. A well-defined mechanism is also established for this purpose so as to take care of any failure in adhering to this code of conducts. The code of conducts is based on Social Security Act enacted by the Government of India (State / Central) also called Model Standing Order or Certified Standing Order. These Standing Orders are based on law

1Hyderabad [I.V.RATNA RAO] Date: 30.04.2004 Consultant Vigilance Commission
of natural justice which vividly clarifies the following:

(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 unbiased. The second principle stipulates that the charged employee should be given a reasonable opportunity of being heard and this operates throughout the proceedings from the beginning to the end.

The Inquiring Authority must act honestly and in good faith. Inquiring Authority must not adopt a procedure contrary to the rules of Natural Justice, if so, the ultimate decision is liable to be quashed.

The Article 311 of the Constitution of India clearly lays down that “No person holding a civil post shall be dismissed, removed, compulsorily retired or reduced in rank, unless an inquiry is held and given a reasonable opportunity of being heard in respect of the charges leveled against him.

The human resource is perhaps the most valuable asset of any organisation. It is the human resource, which exploit’s other resources in the organisation so as to achieve the organisational objectives. The aim of the Human Resource Department by what ever name it is known such as Personnel Department, P&IR, etc, is to get the best out of the human resource of the organisation. For the achievement of this purpose, there are many sub-systems in the Human Resource

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Department such as Grievance Handling, Counseling, Performance Appraisal, Career Planning, Training & Development, etc. Reward and punishment system is one of the sub-system under the Human Resource System.

It is essential that every organisation, whether government or semi-government or private, should have a well established reward and punishment system to ensure that the people are made to work towards the fulfillment of the organisational goals. While the reward system will encourage the employees to work better towards the achievement of organizational goals, punishment system is used to prevent people from working against the organisational goals. Misconduct, or non-conforming behavior, as it is sometimes called can be tackled in many ways such as Counseling, warning, etc. In extreme cases such as, criminal breach of trust, theft, fraud, etc. the employer is also at liberty to proceed against the employee, if the misconduct of the latter falls within the purview of the penal provisions of the law of the land.

However such proceedings are time consuming and call for a higher degree of proof. In addition to the above option, the employer also has an option to deal with the erring employee within the terms of employment. In such an eventuality, the employee may be awarded any penalty which may vary from the communication of the displeasure to the severance of the employer-employee relationship i.e. dismissal from service.
5.1.1 Overview

There was a time when the employer was virtually free to hire and fire his employees. Over a period of time, this common law notion has gone. Today an employer can inflict punishment on an employee only after following some statutory provisions depending upon the nature of the organisation. Briefly, the various statutory provisions which govern the actions of different types of organisation are as under: 5

- **Government**: Part XIV of the Constitution of India relates to the terms of employment in respect of persons appointed in connection with the affairs of the State. Any action against the employees of the Union Government and the State Governments should conform to these Constitutional provisions, which confer certain protections on the Government Servants. These provisions are applicable only to the employees of the various Ministries, Departments and Constitution of India.

    In addition to the constitutional provisions, there are certain rules, which are applicable to the conduct of the proceedings for taking action against the erring employees. Central Civil Services (Classification, Control, and Appeal) Rules 1965 covers a vast majority of the Central Government employees. Besides, there are also several other Rules, which are applicable to various sections of the employees in a number of services.

5 Source Page 111 Ibid
6 Source Page 111 Ibid
7 BIR Act
Semi Governmental Organisations: By this we mean the Public Sector Undertakings and Autonomous Bodies and Societies controlled by the Government. Provisions of Part XIV of the Constitution of India do not apply to the employees of these Organisations. However, as these organisations can be brought within the definition of the term 'State' as described in Article 12 of the Constitution of India, the employees of these organisations are protected against the violation of their Fundamental Rights by the orders of their employer. The employees of these organisations on the grounds of arbitrariness, etc can challenge the action of the employer. These organisations also have their own sets of rules for processing the cases for conducting the disciplinary proceedings against their employees.

Private Organisations: These are governed by the various industrial and labour laws of the country and the approved standing orders applicable for the establishment. One of the principle which was evolved by the Labour Laws was that before punishing an employee for misconduct there must be a Domestic Enquiry – a trial – in which the employee should be given a fair opportunity of putting up his defence. As the Honorable Supreme Court has said in dealing with the industrial disputes under Industrial Dispute Act, 1947 and other similar legislations, Industrial Tribunal, Labour Court, Appellate Tribunals and finally these courts have by a series of decisions laid down the Law that Even though under
Contract Law pure and simple, an employee may at the most be liable to dismissal, industrial adjudication may set aside the order of dismissal was made without a proper and fair enquiry by the management which was made against the principles of natural justice or amounted to unfair labour practices. In case of Industrial workers the reason for laying down the rules was that they can be dismissed or otherwise be punished only after enquiry. The purpose is to see that there is Industrial peace so that the production is not hampered. If the employee is arbitrarily punished for undisclosed reasons there may be unrest and friction, which is undesirable. It is therefore in the interest of the industrial peace and production that employees should be punished only after they have been given a fair opportunity of defending themselves.

5.1.2 Purpose of Holding Domestic Enquiry*

The purpose of Domestic Enquiry is mainly to find out the truth behind the allegation made against the worker. Though it is not a judicial enquiry it is a quasi-judicial enquiry of the judicial proceedings i.e. the enquiry officer as a presiding officer the presenting officer as a prosecutor and any another person representing the case on behalf of the accused workman is called defence assistance. Then follows the examination of prosecution witnesses and cross examination by the accused employee or by the employee assisting him in re-examination, cross examination, reexamination of the defence witnesses.

* Source 111 ibid
The purpose of this enquiry is two fold i.e. firstly to give delinquent workman an opportunity to make a statement against all charges which are made against him as well as to examine any witness in his defence and to cross examine the prosecution witnesses and secondly, to give the employer an opportunity to assess the merit’s of the cases from the findings of the enquiry officer as well as the evidence and records procedure followed in the case and to reach his own conclusions as to the guilt of the accused and thereafter to decide the quantum of punishment to be imposed on him. The future of the employee is depending upon the domestic enquiry. A great care has therefore to be taken to conduct the enquiry with all fairness. Though it is based on the rules of criminal trial i.e. on the strict rules of evidence, it must be conducted on the rules of Natural Justice and fair play. In short all the reasonable opportunity is to be given to the accused employee.

The disciplinary proceedings is intended to give the employee concerned (a charged employee) a last chance to prove his innocence. He should not take it lightly. He may loose his job. Technicalities of the Criminal law are not applicable to the disciplinary proceedings. The Evidence Act is not strictly applicable in the departmental inquiries but administrative tribunals and quasi-judicial proceedings are duty-bound to act judicially, impartially and according to the Rule of Law. When disciplinary proceedings are going to the held the employer should
follow the principles of natural justice and the constitutional provision
which, are elaborated as under:

5.1.3 Principles of Natural Justice

The Natural Justice is derived from the old expression 'jus naturale'
i.e. Justice which comes naturally to a man or which is a part of his
nature.

Lord Asher has defined it as Natural sense of what is right and
what is wrong. It is well known that the element of jurisprudence which
are now regarded as the hall mark of judicial system in civilized society
where generally enforced or regarded as proper in olden times. The
justice of Vikramaditya is proverbial and so was the case in the recent
past during the reign of Jahangir commonly known as ‘Jahangiri insaf’
the common thread in the both the systems of justice was that the
Kind would hear the complaint first and then the person against whom
the complaint is lodged before awarding any punishment. In England
Principle of British justice were based on the principle of fair play and
justice. The phrase ‘due process' has been included in the American
constitution that ‘no man should be condemned unheard’ was a precept
known to the Greeks. It is concept of practical utility in the dispersion
of justice whether by a court of law or a quasi-judicial tribunal or
authority. The historical development of principles of Natural Justice
is as follows:

9 Source Page 111 Ibid
The natural justice is antecedents’ as man him himself. The Bible tells us the story of Adam and Eve, when they ate fruit of knowledge while they were living in the paradise. The story tells us that the God had forbidden Adam and Eve, the first man and woman to eat the fruit of particular tree in Eden Garden. The Satan however induced them to test the fruit, which they did. When this fact came to the knowledge of god he did not spared them and passed sentence. God, it is so said that, called upon both Adam and Eve to explain why did you eat the fruit’s without my permission. This clearly shows that even God who is omni present and who knows all things did not think it proper to inflict punishment on them without hearing, without giving them proper opportunity. These principles ‘No one should be condemned unheard’ is derived from the action of the God himself. Certainly there can be no better authority in the world than God.

♦ Position in England

Most of the eminent judges of 17 Century upheld the supremacy of natural justice over the statutory law. In Calvin’s case (1608)-7Co. REPLA (121): 77 ER 377 (391-392)- it was held that the law of nature is immutable as it came before any judicial or Municipal Law. It was also held that the law of nature was infused into the heart of man by God at the time of creation of the nature of man for his preservation and direction and this was therefore eternal and moral law since it was written with the finger of God in the hear of man before the law was
written by his prophet i.e. Moses. The view held was that even Acts passed by the parliament these were repugnant to the law of nature would void. According to this interpretation even an Act made by Parliament against the ‘natural justice and equity’ as to make a man judge in his own case was held as void as the law of the nature were considered immutable. The position however underwent a radical change in the 10th Century when the Court in England held that the general principle of natural justice cannot modify the statutory law and no court can countenance a view that an Act of parliament is not binding if it is contradictory to reason or principle of natural justice. Presently the position prevailing in England is that the principle of justice is not constructed to overwrite statutory laws.

◆ Position in India

India is also a common law country, which is slightly different. Article 21 of Constitution provides that no person shall be deprived of his life or liberty except according to the procedure established by law. The position as it prevail at present is that a law can be passed by Indian Parliament without violating the principle of natural justice and such shall not be void. In India any law, which is repugnant to the express provision of constitution alone can be struck down as void thus the law providing for preventive detention without trial is void in the law of India. The Supreme Court in the case of K K Kalapak Vs Union of India has admirably stated the correct position of principle of natural
justice. The Supreme Court observed “The aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice.” These rules can operate only in areas not covered by any law. In other words they do not supplant the law but supplement it. Whereas the duty of the court, quasi judicial tribunal or authority is to follow the law as enacted by the legislature, they are not debarred from reading into it the principle of natural justice if this can be read in consonance with the provision of law. If, however the law provides for procedure which excludes the principle of natural justice either by specific provision or by implication is void.

**Principles of Natural Justice**

a) ‘Audi alteram partem’ which denotes ‘hear the other party’ or in other words ‘no one should be condemned unheard’.

b) ‘Nemo debat esse judex in propria causa’ meaning that no one shall be a judge in his own case.

c) The final order must be a speaking order.

d) The decision must be made in good faith i.e. justice should not only be done but should manifestly appear to have been done.

◆ **First Principle**

The first principle of natural justice i.e. ‘Audi alteram partem’ means that no person shall be condemned unheard. A natural corollary of this principle is that the party against whom the proceedings are launched should have a reasonable notice of the case he is called upon
to meet. The reasonableness of the notice is a question of fact to be ascertained in each case. However, notice implies that the person concerned is not only being informed of the allegations against him but also the evidence supporting the allegations. The other requirement is that the person should be given a fair chance of being heard and allows rebutting or explaining the allegations levelled against him. This he can do, only if, he is allowed to cross examine the witness produced in support of the allegations, produce witnesses and documents in his own defence. This clearly means that he should have a fair opportunity to state his case and to meet the allegations made against him. This principle of natural justice also imposes another restriction that no evidence shall be recorded at the back of the party. But if a party fails to avail of the opportunity afforded to it of fair hearing because of its own willful omission or neglect, then it is debarred from pleading that the principles of natural justice have been violated in the case, the Supreme Court has laid down the following three conditions, which if satisfied would amount to reasonable opportunity having been afforded:

a] The adjudicator should receive all the relevant material, which a party wishes to submit in his support.

b] The evidence of the opponent whether oral or documentary should be taken in his presence.

c] Each party should have the opportunity of rebutting the evidence of the other by cross-examination or explanation.
If the above conditions are met, the principles of natural justice are deemed to be complied with substantially.

**Second Principle**

The second principle that no one shall be a judge in his own cause necessarily implies that the tribunal of the judge must be impartial and without bias. The judicial or quasi judicial authority should not only himself not be a party but also not be interested as a party in the subject matter of the dispute which he has to decide. ‘Judges, like Caesar's wife, should be above suspicion’. It is of fundamental importance that justice should not only be done, but should be undoubtedly and manifestly be seen to be done. It is therefore, clear that the decision of a tribunal is vitiated by the mere fact an interested person sat at the hearing. In the case of A.K.Kariapak Vs. the Union of India, The Supreme court has accepted the plea of the petitioner that the selection was vitiated because one of the persons on the Selection Board was himself a candidate for the post for which the selection was held. In such a case the bias of the selection Board was obvious. In order that a judge or Quasi judicial authority should be impartial it must be free from bias of any kind.

**Kinds of Bias**

Bias is of three kinds namely,

i) **Pecuniary bias**

A pecuniary interest, however slight, will disqualify the person to be a judge in the case. Thus in the case of Air
Corporation Employees Union Vs. Vyas the proceedings were held invalid because the Chairman of the arbitrators had accepted the hospitality of the Air Corporation of an inaugural flight. Similarly, share holders in a Railway Company were held to be disqualified from hearing charges against ticket less passengers even though the interest of each share holder was less than one fourth of a pence. However, mere trusteeship of a friendly society would not constitute a pecuniary interest to disqualify a trustee.

**ii) Personal bias**

A judge may sometime have personal bias towards a party owing to relationship and the like or he may be hostile to a party as a result of events happening either before or during the trial. Whenever there is a allegation of personal bias it should be seen whether there is in the mind of the accused a reasonable apprehension that he would not get a fair trial. The test, therefore, is that there should be a reasonable likelihood of bias. The phrase reasonable likelihood has been defined by the Hon'ble Supreme Court in the case of R. Parthsarathy Vs. State of Andhra Pradesh (AIR 1973-SC-2701) by observing that the reasonable likelihood could be assumed if in the mind of a reasonable man there is suspicious that there is a likelihood of bias.

**iii) Bias in the subject matter or official bias must be the specific.**

The judge should not try a case in which he has examined himself as a witness. In the case of State of UP Mohmad Noor (AIR 1958
the facts were that Mohmad Noor was proceeded against departmentally. The inquiry officer appointed to inquire into the truth of the allegation acted as a witness. The Supreme Court held that he should not act as a witness. The Supreme Court held that he could not be a judge and the witness at the same time.

In the cases of bias, the party is required to raise the objection of bias at the earliest possible opportunity. Thus if a party who is with full knowledge of the facts constituting bias but does not raise the objection it will be assumed that the party has expressly or impliedly viewed his right. In these circumstances the objection raised has to be over ruled.

**Third Principle**

This principle of natural justice demands that the final order should be a speaking order. A speaking order is one, which contain the reason for the conclusion reached. Now whether the judge has considered the evidence before him or not can only be ascertained if the final order is a speaking order.

In the case of Bhagat Raja Vs. Union of India (1967 SCP 302) it has been held that if an order does not give any reason it does not fulfill the elementary requirements of a quasi-judicial process.

**Fourth Principle**

It is that the decision must be made in good faith and is derived directly from the principle that no one shall be judge in his own case. It
presupposes the impartiality of judge and that he should be without any bias. The decision must be made in good faith. It implies that the judge has bestow due consideration to the facts and evidence adduced during the trial or inquiry. He has arrived at the decision without favour of any of the party and that the inquiry officer has followed the procedure in such a manner that justice is not only done but manifestly appear to have been done.

The Principles of natural justice are imported into the disciplinary proceedings by virtue of the provision of the Article 311 (2) of constitution of India, which provides for reasonable opportunity being given to the charged Government Servant before imposing on him the penalty of dismissal, removal, or reduction in rank. However, reasonable opportunity has been defined in the constitution hence, the principles of natural justice become applicable during the departmental inquiry. It would thus be necessary to appoint an impartial inquiry authority to inquire into the charges against the Government Servant. A prosecution witness or a person who had any kind of bias cannot be appointed as an inquiry authority. It is also necessary that fair opportunity is provide to the charged Govt. Servant during the inquiry to enable him to put forth his point of view before the inquiry authority with aid of oral and documentary evidence. The final report of the inquiry authority in the final order of the disciplinary authority for imposing a penalty has to be in speaking order.
The essential of the natural justice and requirement of natural justice have been summoned by the Madras High Court in the case of G. Gabrial Vs, State of Madras[(1959-2 MLJ 15 Madras® HC] in the following term:

“All inquiries, judicial, departmental or other into the conduct of individual must be confirm to certain standards” one is that a person proceeded against must be given a fair and reasonable opportunity to defend himself. Another is that the person who has been assigned the duty of holding the inquiry must discharge the duty without bias and certainly without vindictiveness- he must conduct himself objectively and dispassionately not merely during the procedural stage of the inquiry, but also in dealing with the evidence and the material on record and while drawing up the final order. The further requirement is that the conclusion must be vested on the evidence and not matter outside the records. And, when it is said that the conclusion must be relied upon the evidence it goes without saying that it must not be based on the misreading of the evidence. These requirements are basic and cannot be whetted down whatever be the nature of inquiry. Where the inquiry is judicial we insist that yet another requirement should be complied with i.e. content in the familiar statement that it is not sufficient that the justice is done but that justice should also be manifestly appear to be done.
5.1.4 Constitutional Provision related to disciplinary proceedings:

1] Article 309, 310, 311 are relevant to disciplinary proceedings. Article 309 is an enabling provision that gives power to the legislature to enact laws governing the conditions of services of the persons appointed in connection with the affairs of the states. Proviso to this article provides that pending the enactment of laws, The President may frame rules for the above purpose. The laws as well as rules to be framed for the purpose must be subject to the provision of the constitutions.

2] Article 310 of the constitution contains what is known as the pleasure doctrine. It provides that the term of appointment of the Government Servant shall be dependent upon the pleasure of President. The same article also provides that the pleasure of the president can be over ridden only by the express provisions of the constitution and nothing else.

3] A restriction on the pleasure of the president contained in the Article 311. The first thing to be noted that Article 311 does not apply to defence personnel. The Supreme Court has clarified that even the civilians working in connection with defence are not covered by the provisions of Article 311. Further this article basically grants two protections to the civilian Government Servants. This relates to “Who & How”. The first part of the article

10 Source Page 111 Ibid
provides that no person shall be dismissed or removed from the service by an authority subordinate to the one by which he was appointed. It means that if the employee is dismissed from the service his case has to be considered by the authority who is equivalent to the rank of his appointing authority. In case employee is dismissed or removed from the service by the authority lower than the appointing authority it will be unconstitutional.

The Article 311 provides two protections to the Government employees. Further the second protection granted by this Article is available in Clause 2 of this Article & it relates how a Government Servant can be dismissed or removed from the service or reduced in rank. It provides that no one can be removed from the service without conducting the enquiry. The same Article also indicate that the above mentioned enquiry must satisfy the following two conditions:

- The individual concern must be informed of the charges.
- He must be granted a reasonable opportunity of being heard in respect of the charges.

Reasonable opportunity has not been defined in the constitution but the Supreme Court of India defines, through a number of decisions that includes, opportunity to know the charges, must know the evidence laid by the disciplinary authority
in support of charges, inspection of documents, leading evidence in defence etc. Another important question relating to the applicability of Article 311 is whether the Article provides protection both to the permanent and employees. The Article does not specifically state as to whether the provisions are applicable to temporary employees also however the Supreme Court has clarified that the protection to the temporary employees is available under any one of the under mentioned circumstances.

- Where there is a Right to post
- Where there is vitiation of evil consequences

5] All Permanent employees have a right to post and hence are entitled for this protection. As regards the temporary employees a reasonable opportunity of defence has to be afforded if they are being vitiated by the evil consequences. Thus if a temporary employee is discharged from the service by giving him One Month Notice without any reason, he can be discharged on the basis of misconduct. In such cases an enquiry is necessary. Even probationer will be entitle to the protection of enquiry.

6] Article 311 also provides that under certain circumstances an employee can be dismissed or removed from the service or reduced in rank without any enquiry. These are the contents are given in second proviso of Article 311.i.e
Where the penalty is being imposed on the ground of misconduct which has led to his conviction on criminal charges or

Where the disciplinary authority is satisfied for the reason to be recorded that it is not reasonably practicable to hold an enquiry in the case or

Where the president is satisfied that in the interest of the country it is not advisable to hold the enquiry.

There may be circumstances where any Government Servant may be proceeded against any criminal court. The criminal case might have been filed by the employer or the employee might have been tried for an offence he has committed in his private life. It is relevant to note that the standard of proof required in a criminal case is, proof beyond reasonable doubt. Whereas in the departmental proceedings the standard of proof is preponderance of probability. Thus if an employee has been held guilty in a criminal case it would be much more easier to establish the charge in a departmental proceeding. Conducting a departmental enquiry after the employee has been held guilty in a criminal case would therefore be an exercise in futility. Hence the power granted by the second proviso to Article 311 may be availed and appropriate penalty may be imposed on the employee. It must be however be noted that this provision only grant's a power to the disciplinary
authority to impose the penalty without enquiry when the employee has been convicted in a criminal case. It is not mandatory for the disciplinary authority to dismiss the employee whenever he has been convicted in a criminal case. The concerned authority should go through the judgment and can take the decision depending upon the circumstances of the case.

Another fact is that when the disciplinary authority may impose penalty on the employee without conducting any enquiry is when, the disciplinary authority is satisfied for reason to be recorded that it is not reasonable to hold the enquiry. The constitution does not require the communication of the reason in the penalty order but the Supreme Court held in its judgment that it is desirable to communicate the reason in the penalty order. This will give chance to the penalized employee complaining that the reason were fabricated after the issue of penalty order.

An employee may be dismissed or removed from the service or reduced in rank without conducting enquiry whenever The president is of the opinion that, in the interest of the security of the country it is not expedient to hold an enquiry. In such cases the decision to dispense with the enquiry is taken at the level of president and that too only on the ground of the security of the country. Here, the word president has been used in constitutional sense. The decision does not require personnel approval of the
President. It would be sufficient if the minister in charge takes the decision.

The above-mentioned provisions are applicable to the employees of the ministerial departments attached and to the subordinate offices only. Yet the same are relevant to the employees of public sector undertaking and the autonomous bodies. This is so because similar provision exists in the service rules relating to a number of PSUs and autonomous bodies.

In addition to XIV of the constitution Article 309 to 311 part -III of the Constitution is also relevant to the matter of disciplinary proceedings. Part-III of constitution contains the fundamental right. These are available against action of the State. The State is prohibited from denying the right to equality etc. As per the current interpretation of Article 14, it strikes at the roof of arbitrariness. Hence any employee affected by the arbitrary action of the state can file a writ petition alleging violation of right to equality. Article 21 of the constitution provides right to life and liberty. It state’s no one shall be deprived of his right to life and liberty except in accordance with the procedure established by law. According to the present interpretation of Hon’ble Supreme Court the word life occurring in Article 21 of the Constitution does not denote mere existence. Life as mentioned in Article 21 relates to dignified and meaningful life.

Source Page Ibid
Hence, the deprivation of employment may amount to the deprivation of life. Hence Article 21 indirectly provides that no one can be deprived of his employment except in accordance with the procedure of law. Besides this Hon'ble Supreme court has also stated in the case of Menka Gandhi Vs. Union of India (AIR 1978 SC 5678) that the phrase procedure established by the law mentioned in the above Article refer to a procedure which is just reasonable and fair and not any procedure which is arbitrary. Hence there is requirement for the Governmental and Semi governmental organizations to ensure that employees are not deprived of their employment (i.e. life) by an arbitrary procedure. Care must be taken to see that a just, reasonable and fair procedure is followed in the disciplinary proceedings.

5.1.5 Related issues of disciplinary proceedings

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

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.
5.2 Constituting of Disciplinary Enquiry

The Disciplinary proceedings are constituted 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 any investigating agency.

The 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 the procedure as no procedure is prescribed. The employee 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.

When the competent authority decides to initiate the disciplinary proceedings against the employee and if they feel that presence of employee against whom the action is to be initiated will hamper the evidences or witnesses or his other act will bring hurdle in the investigation or inquiry proceedings, he may be placed under suspension. The suspension is summarized as under:
5.2.1 Suspension\textsuperscript{12}

'Suspension' is a temporary deprivation of office, the contract of service is not terminated. However the employee placed under suspension is not allowed to discharge the functions of his office during the period of his suspension. It is not a penalty but it is only an intermediate step.

The following authorities are empowered to place an employee under suspension.

i] Appointing authority or any authority to which the appointing authority is subordinate.

ii] Disciplinary Authority

iii] Any other authority empowered in this behalf by the President of India by general or special order.

Under the following circumstances the employee can be placed under suspension:

i] Where a disciplinary proceeding is contemplated or is pending.

ii] Wherein opinion of the competent authority he has engaged himself in activities prejudicial to the interest of the security of the state.

iii] Where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

iv] Whenever an employee is involved in a dowry death case and case has been registered by the police against him U/s 304 B of Indian Penal Code he shall be placed under suspension.

\textsuperscript{12} Source Page 111 Ibid
irrespective of the duration of the custody in the event of his arrest. Otherwise he will be placed under suspension immediately, on submission of the report by police to the Magistrate.

**Entitlement during the suspension**

The employee placed under suspension is entitled to draw subsistence allowance at an amount equal to leave salary, half pay of half average pay plus Dearness Allowance as admissible on such amount and City Compensatory Allowance (CCA) and House Rent Allowance (HRA) as admissible to him before suspension for first three months. If the period of suspension exceeds three months the amount of subsistence allowance may be increased or decreased up to maximum 50% of the amount being drawn by him during the first three months of the suspension depending on whether the reasons for continue suspension are attributable directly or indirectly to the employee.

**Administrative Effects of Suspension**

i] Grant of advance for purchase of conveyance should not be granted.

ii] The Advance on housing building is admissible.

iii] He can function as Defence Assistant subject to fulfillment of other conditions.

iv] Entry Card should be withdrawn if issued for entering the office.

v] In case of death he should be treated as on duty and all the
benefit's should be given.

vi] Leave may not be granted.

vii] No LTC may be granted.

viii] He should not be asked to mark the attendance.

ix] The headquarter of the Govt. Servant should normally be assumed to be his last place of duty. However, on a request for a change of headquarter, competent authority may change the head quarter if it is satisfied that such course of action will not put Govt. to any expenditure.

**Resignation during the suspension**

If a suspended employee summit's the resignation, the competent authority will consider whether it would be in public interest to accept the resignation, normally it would not be accepted except where allegations do not involve morale turpitude or whether evidence is not sufficient to prove the charges leading to removal, dismissal, or where the charges leveled against the employee are not likely to be proved and it would be better to accept the resignation.

**Retirement or Superannuation while on Suspension**

On attaining the age of superannuation the Govt. Servant will be retired but he will not get the subsistence allowance but will draw provisional pension.
5.2.2 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 proceeding 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

13 Source Page 111 Ibid
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.

5.3 Planning

It is an important part of the disciplinary proceedings. The disciplinary Authority is under a statutory obligation to hold an inquiry in which the charged employee is informed in writing of the charges leveled against him and is given a reasonable opportunity to defend himself of the charges and is given a 'personal hearing'. It is further intended to afford opportunity to the charged employee to defend himself by cross-examining the witnesses produced against him and to produce witnesses and documents in support of his defence. The breach of procedural guarantee will vitiate the entire proceedings.

Article 311 of the Constitution lays down that, no person holding a civil post shall be dismissed, removed, compulsorily retired or reduced in rank, unless an inquiry is held and being given a reasonable opportunity of being heard in respect of the charges.

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The Disciplinary Authority may either itself hold an oral inquiry into the charges, which are not admitted by the charged employee or appoint Inquiry Authority to hold the inquiry on its behalf. The Inquiry Authority thus becomes that Department's nominee and holds the inquiry on behalf of the Disciplinary Authority. The Disciplinary authority applies its own mind and decides as to whether the lapses on part of charged employee were blameworthy or charged employee was innocent. But in the discharge of its functions, the Inquiry Authority is not under the directions of Disciplinary Authority, and the Inquiry Authority must not be related to the subject matter of inquiry and he should conduct the inquiry dispassionately, objectively and without bias. Justice should not only be done it should seem to have been done. It is desired that only officers not interested in the matter are appointed as Inquiry officers in departmental proceedings. Even outsiders can be entrusted the job of Inquiry Authority who are having special qualifications or experience.

5.3.1 Appointment of Inquiring Authority

Disciplinary Authority itself can act as Inquiry Authority but normally a separate person is appointed as Inquiry Authority.

Where the employee appears before the disciplinary authority and pleads not guilty of the charges or refuses or omits to plead, the disciplinary authority shall record the plea and obtain the signature of the employee thereon and may decide to hold the inquiry itself or if it
considers it necessary to do so, appoint a serving or a retired employee as inquiring authority for holding the inquiry into the charges.

The disciplinary proceedings are quasi judicial in nature. Inquiring Authority shall check up whether he has been appointed by a competent disciplinary authority while issuing the written order. Before starting the inquiry proceedings he shall have a copy of the documents i.e. copy of article of charges, statement of imputation of misconduct, a written statement of defence, list of witnesses and list of documents on which the article of charges are to be substantiated. The normal practice is to appoint another officer as Inquiry Officer. The officer selected should be of senior rank and the one who is not suspected of any prejudice or bias against the charged employee and who did not express an opinion on the merit's 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 employee.

Immediately on his appointment, the Inquiring Authority shall open a 'Daily Order Sheet which is a running record of all important events during the course of inquiry and business transacted on each hearing. It should contain briefly all important events during the course of inquiry, a brief statement of all oral and written representations by the charged employee and orders passed, record of misconduct and a record of orders passed by inquiry authority regarding holding hearings, adjournments etc.
In the absence of Daily Order Sheet, it would be difficult ascertain as to whether the proper procedure was followed or not, at the various states of inquiry. Entries in the daily order sheet shall be written by the Inquiry Authority himself and shall be signed by the charged employee and Presenting Officer and also the Defence Assistant. Copy of the Daily Order Sheet is supplied to the Presenting Officer and Charged Officer along with a copy of the depositions of the witnesses recorded on that day.

He shall conduct the inquiry by just, judicious and fair in manner. He should not be bias and should have any personal interest in the case. The inquiry should be completed in the given period. He should conduct the inquiry on day-to-day basis. Undue delay in the proceedings should be avoided, even charged employee try to use delaying tactics. As this is the quasi-judicial inquiry therefore, provision of evidence act is not applicable in the inquiry. Irrelevant questions should not be allowed. New evidence also should not be allowed. He should be judicious in his decision. His findings must be based on the evidence. No material from his personal knowledge should be used. He should not indulge in unnecessary arguments. The conclusion should be logical and it should not show that inquiry authority has already made up his mind. The principle of natural justice should be followed.
5.3.2 Appointment of Presenting Officer

The disciplinary authority may also appoint an employee or legal practitioner as Presenting Officer to present the case on his behalf in support of the article of charges before the Inquiring Authority. Ordinarily, an employee belonging to the departmental set up who is conversant with the case is 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 employee. An officer who made the preliminary enquiry into the case should not be appointed as Presenting Officer as bias may be attributed to him. The Government has 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.

The Presenting Officer should be supplied with the 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 employee has submitted a written statement of defence, the Presenting Officer will carefully examine it. If there are any facts which the employee 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 employee has admitted.

The Presenting Officer represents the prima facie findings of Disciplinary Authority. There is some flexibility in Presenting Officers' approach as he had a fresh look at the issues involved. He can put forward faithfully the Disciplinary Authority's total version but he has no authority to drop or modify the charges.

The sole duty of Presenting Officer is to make all out honest efforts to prove the charges. He should study each event in a chronological order and should identify supporting witnesses/ documents for each event. He should also ascertain the precise role played by each person involved in the case / transaction. He should make acquaint himself with witnesses and their role in the transactions and their relation with the charged employee, their antecedents in general. He is required to study the rules / procedures applicable at the relevant time. He should discuss the case with the Inquiry Authority. He should also help Inquiry authority in planning the oral inquiry in supplying the documents. He should take proper custody of the documents and see
that prosecution witnesses are made to be present on the due dates. He should examine and cross-examine the defence witnesses. He should avoid leading questions to examination-in-chief. He should maintain decorum of the quasi-judicial proceedings. As a representative of the Disciplinary Authority, he should adhere to the procedure, maintain records and report progress of the inquiry report to the Disciplinary Authority, and also obtain its timely orders regarding relevance / availability /admissibility of documents, plea of bias against the Inquiry Authority. To prepare written brief and to emphasize logical interference in a given situation and show preponderance of probability.

5.3.3 Role of Presenting Officer

The duty of Presenting Officer is to assist the inquiring authority and plan the stage of regular inquiry proceedings purposefully. He should know the rules and procedures of the inquiry. He should present the case in such a way that it is well understood by concerned individuals. He should get in touch with the investigation officer, he should see that oral and documentary evidence is sufficient to present the case. He should thoroughly study the full case in detail. The witnesses produced by him should be allowed to be cross-examined by the defence. He should not ask the time to submit his written brief. He should always maintain absolute integrity, honesty and good conduct. He should act in a good faith.
5.3.4 Defence Assistant

The disciplinary authority shall serve the orders of appointment of Inquiry Authority and the Presenting Officer to the charged employee and inform him that he may take the assistance of any other employee 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 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 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 charged employee will be so informed by the disciplinary authority so that he may, if he so desires, engage a legal practitioner to present the case on his behalf before the Inquiry Authority. The charged employee may not otherwise engage a legal practitioner. In other cases,
the employee may avail himself of the assistance of any other employee as defined in rule 2(e) of the A.P.Civil Services (CCA) Rules, 1991.

However, he cannot take the assistance of an employee who has two pending disciplinary cases on hand in which he has to give assistance. He may also take the assistance of retired employee. He may take the assistance of an employee posted at any other station, only if permitted by the inquiry authority. He shall not take the assistance of an employee who is dealing in his official capacity with the case of the particular inquiry or any officer to whom an appeal may be preferred.

Model Role of Inquiring Authority, Presenting Officer and the Defence Assistant are as under:

5.3.5 Role of Defence Assistant

When the employee is charge sheeted he is mentally upset and not able to present his own case in proper manner and the defence assistant help him to defend.

5.3.6 Documents - Inspection of Documents

The charged employee is given facility to inspect the documents in presence of Presenting Officer. The charged employee can keep notes or extracts but it would be ensured that documents are not tampered with during the course of inspection. The charged employee will not be allowed to take photocopies.
5.3.7 Admitted documents:

Admitted documents and facts can be taken note of straightaway. Pre-recorded statements of prosecution witnesses will be taken on record during enquiry only, when witnesses confirm their statements before the inquiry authority. The witnesses should be examined in a logical and understandable order, without putting leading questions – suggesting a definite answer. After the examination is over, the witnesses may be cross-examined by the charged employee or his defence assistant, to order to discrepancy, if any, or to see that witnesses understand the question properly and to protect them against any unfair treatment. He may not allow the questions if the cross-examination is irrelevant. After the cross-examination, Presenting Officer can re-examine the witness on any point. In that case the other party will have right to further cross-examination. If at any stage a party wishes to re-examine his own witnesses, he can do so with permission of Inquiry Authority. The inquiry authority may ask such questions as he deem fit to bring out the truth so has a fair and clear understanding of the whole case. At any time during the inquiry the charged employee may decide to plead guilty. The Inquiry authority may accept the plea and record his findings.

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.

5.3.8 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 article of charges 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 upon 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 is the disciplinary authority, by an officer who is authorized to authenticate the orders on behalf of the Governor.
5.3.9 Drawing up of Charge-sheet - Specimen Article of charge

A specimen of an article of charge is 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 an employee, in violation of sub-rules No.— of [Name the Rules as may be applicable]” Quite often expressions like moral turpitude, habitual corruption are freely used in the article of charges 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.

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

i] Article of charges 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 article of charges are proposed to be sustained.

5.3.10 Article of charges

i] Article of charges 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 substandard 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/misbehavior committed and the Conduct Rule violated. It should give the time, place, persons and things involved so that the employee has a clear notice of his involvement. It should be unambiguous and free from vagueness.

ii] The article of charges 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 employee 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.

vii] Multiplication or splitting up of charges on the basis of the same allegation should be avoided.

viii] The terms delinquent and accused suggest prejudging the issue and are inappropriate, and terms like public servant, employee should be used instead.

ix] Charge should not contain expression of opinion as to the guilt of the employee. It should start with the word “that” to convey that it is only an allegation and not a conclusion.

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

xi] There should be no mention of the penalty proposed to be imposed either in the article of charges or the statement of imputations.

5.3.11 Statement of Imputation

Statement of imputation 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 employee in support of each article of charge including any admission or confession made by the employee and any other circumstances which are proposed to be taken into consideration. It should be precise and
factual. It should mention the conduct/ behavior 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 employee. All particulars viz. 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 is ensured. The statement should not refer to the preliminary enquiry report unless relied upon or the Anti-Corruption Bureau Report of enquiry/investigation 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 article of charges and pick up the witnesses and documents there from.

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

The disciplinary authority shall deliver the charge sheet to the employee together with copies of the said documents and copies of statements recorded, if any, of the said witnesses.

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 employee by registered post acknowledgment on his last known address, failing which it may be exhibited on the notice board and published in the official gazette and put in the newspapers. 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 dispatched to the employee irrespective of it’s actual service on the employee.

5.4 Organizing

5.4.1 Action on receipt of statement of defence

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

i] He may review and modify the article of charges, in which case a fresh opportunity should be given to the employee 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.

15 Source Page III Ibid
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, which 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:

5.4.2 Where the employee pleads guilty

The disciplinary authority shall ask the employee 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 employee thereon. The disciplinary authority should give a finding of guilty on such of the charges which are admitted. The admission should be unequivocal, unqualified and unconditional. He may take evidence as he may think
it fit. Where the employee pleads guilty to all the charges, the disciplinary authority may act in the manner laid down in Rule 21.

5.4.3 Defence 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 defence indicating the relevance of the documents so required.

5.4.4 Documents which are not relevant

The disciplinary authority may for the 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.

5.4.5 Documents, where privilege is claimed

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 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.

5.4.6 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 role of the Government Servant:** The character/confidential role 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.

v] **A copy of the First Information Report registered by the Police, if any, may be made available to the Government Servant, if asked for.**
5.4.7 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 article of charges 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.

vii] 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.

5.4.8 Evidence on behalf of Disciplinary Authority

On the date fixed for recording the evidence, the oral and documentary evidence by which the article of charges 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.

5.4.9 New evidence on behalf of Disciplinary Authority

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.

5.4.10 Summoning of Witnesses

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 employee 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 employee 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 employee 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 employees will be sent to the Head of Department/Office under whom the employee, who is to be appear as a witness, is working for the time being, with the request that the Head of Department/Office will direct the employee 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 employee summoned would be treated as conduct, unbecoming of an employee and would make him liable for disciplinary action. The notices addressed to non-official witnesses will be sent by registered post acknowledgment. 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 see that the witnesses are present on behalf of the disciplinary authority on the date fixed for their examination.
5.4.11 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 article of charges is proposed to be proved will then be produced by the officer having custody of the documents or by an officer deputed by him for this 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 admit’s the genuineness of any of the documents, copies of which have been furnished to him, and if he admit’s 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 assistant 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 article of
charges 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.

5.4.12 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, Presenting Officer and 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 efficient 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 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.

5.4.13 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 permission 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.

5.4.14 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.

5.4.15 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 lives 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.
5.4.16 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.

5.4.17 Defence of employee

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.
5.4.18 Evidence on behalf of employee

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 permission 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 permission 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 for 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 there from 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.

5.4.19 Employee questioned on evidence

The inquiring authority may after the Government Servant closes his case and shall, if the Government Servant has not examined himself, generally questions 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 circumstances 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 is 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 is remained unanswered.

5.4.20 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.

5.4.21 Requests, Representations etc. during Inquiry

Both sides make representations 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, such as “rejected” will not serve the purpose.

5.4.22 Daily Order Sheet

The Inquiry Officer should maintain Daily Order Sheet in it 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.

5.4.23 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 behavior 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 evidence 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.
5.4.24 **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.

5.4.25 **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 exhibit’s produced in proof of the article of charges;
   b) List of exhibit’s 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 exhibit’s;
A folder containing daily order sheet;

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.

5.4.26 Ex - parte inquiry

Some times charged employee fails or refuse to be present during the inquiry proceedings, despite of the fact that proper notice is issued to him. In such circumstances charged employee to whom a copy of the article of charges has been delivered and he does not submit his written statement of defence within time given, or does not appear in person before the Inquiry Authority during the oral inquiry proceedings, the Inquiry Authority may hold the inquiry ex-parte. But the Inquiry Authority has got no justification to proceed ex parte if the charge sheet has not been delivered to the charged employee. Further the charged employee should be given reasonable opportunity to be heard. In departmental proceedings, hearing the party in absence of the other would violate the principles of natural justice.

Ex-Parte proceedings shall be justified

Where the charged employee does not appear before the Inquiry Authority on the fixed date, where he asked for mercy, without adducing any evidence, where he refuses to take part in disciplinary proceedings and fail to be present during the inquiry proceedings or adopt a non-
co-operative attitude. Cases are there where charged employee chooses to withdraw on flimsy ground and management was bent upon to dismissing him, and where the inquiry authority asked the witnesses to sign such papers connected with the inquiry. Cases are there where the charged officer was refused to engage the legal practitioner and he was not allowed access to additional documents. Non-co-operation may be by not attending the inquiry proceedings, attending proceedings but not co-operating, and attending but creating hurdles in the proceedings.

Inquiry authority can proceed ex-parte with taking all precautions and only should take the decision when charged employee remain absent without any justification or deliberately. In case where charged employee is under suspension and not being paid subsistence allowance for a long period and shown his inability to attend his inquiry because of shortage of funds.

Ex-parte findings shall be based on evidence that may be oral and documentary. Where the Government Servant to whom a copy of the article of charges 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, omit's or refuses to be present during the inquiry proceedings despite proper notice is issued to him. Under such circumstances the inquiry officer is left with no other alternative but to hold the proceedings ex-parte in the absence of the employee. Where the proceedings are held ex-parte, the inquiry officer should record the reason as to why he is proceeding ex-parte. In ex-parte proceedings, the inquiry will have to be held, i.e. witnesses and documents should be produced and evidence be 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 Supreme 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 material which were placed before him. When the Inquiry Officer had afforded to the public servant an opportunity to remain present and to
make his defence, 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 vice-a-versa, the Inquiry Officer was justified in proceeding upon the materials placed before him. It may be noted that delivery of the article of charges to the Government Servant is a pre-condition to invoking the provision of ex-parte proceedings, as mentioned under sub-rule (6) of Rule 20.

5.5 Controlling Authority

5.5.1 Functions and Powers of Inquiry Authority

The following are the functions, which an Inquiry Officer will have to discharge, and powers, which can be exercised 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 him that it is properly worded and signed by the competent authority.

2] An employee (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.

16 Source Page 139 Ibid
Inquiry Officer cannot delegate power of conducting inquiry.

Inquiry Officer is not subject to the direction of the Disciplinary Authority or his own superior officer in the conducting of the inquiry.

A witness cannot be Inquiry Officer.

Inquiry Officer should stop 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.

He should check up whether the enclosures to the charge sheet and other records are received.

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.

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 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 production of such documents.

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

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

14] The 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.

15] 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.

16] 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 exhibit’s straightaway. This would remove the necessity of examining witnesses to prove them.

17] Depositions of witnesses may be recorded in a narrative form. Wherever considered necessary, question and answer may be recorded as it is word to word. 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.”

18] 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 the language known to him 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 as to be correct.”

19] 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.

20] Inquiry Officer may record the behavior of the witnesses wherever considered necessary and discuss it in his report.

21] 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.

22] 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.

23] 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 decision of not examining all of them.

24] Combined statements of two or more witnesses should not be recorded. Separate statement should be recorded of each witness.

25] No other witness or outsider shall be allowed during the examination of each witness.

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

27] 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.
28] Before the close of the evidence on behalf of the disciplinary authority, the Inquiry Officer has the powers to 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.

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

30] Inquiry Officer cannot cross-examine the charged employee or put questions confirming his involvement in the case.

31] 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.

32] 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.
Inquiry Officer examining himself as a witness cannot continue as Inquiry Officer.

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.

Adjournment may be granted where there are enough 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 may be made in the Daily Order Sheet.

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

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.

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

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

Where, during the course of the inquiry, another Inquiry Officer succeeds the 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.

41] Inquiry Officer should not take any material not relating to the
case or material not brought on record in the inquiry, into
consideration.

42] Inquiry Officer should not refer to the preliminary enquiry report
or report of investigation by the police or any other record or
documents, when they are not part of the record of inquiry.

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

44] Inquiry Officer should not impart his personal knowledge into
the inquiry.

45] For any decision taken and orders passed on any matter in the
course of the inquiry, cogent reasons should be mentioned in
justification submitted in writing and placed on record.

46] 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.

47] Findings on the charges should be based entirely on the evidence
adduced during the inquiry.

48] Inquiry Officer should give his findings on each charge.

49] Inquiry Officer cannot recommend penalty.
50] 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.

51] Inquiry Officer should just do what is “lawful” without being “legalistic”.

5.5.2 Charge, where proved in-part

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

5.5.3 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.

5.5.4 Where a different charge is proved

If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charges different from the original articles of the charge, it may record its findings on such article of charges, 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 had a reasonable opportunity of defending himself against such article of charges.

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 the 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.

5.5.5 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 article of charges and the statement of imputation of misconduct or misbehavior;

iii] Charges which were admitted or dropped or not pressed, if any;

iv] Charges that were actually inquired into;

v] The defence of the employee 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.

5.5.6 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 exhibit’s. 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 the 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.

The Inquiry Officer, after signing the report cannot make any modification in the report.
Before the management decide to institute the disciplinary proceedings against an employee it must decide who will be the competent disciplinary authority in a particular case because the Union and the State Govt. or Public Undertaking all situation, governed by statutory provisions. Any superior authority cannot impose a penalty on an employee unless it happens to be prescribed disciplinary authority under the disciplinary rules.

5.5.7 Disciplinary Authority

Definition of Disciplinary Authority

The Disciplinary authority is an authority who is competent under the provisions of constitution of India or the relevant disciplinary rules, to impose on any particular employee, any of the penalties specified in the disciplinary rules.

How to locate a Disciplinary Authority

The various authorities have been specified in the relevant disciplinary rules. For instance, in case of Central Civil Services, the various disciplinary authorities have been enumerated in Rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules,1965. Many a time, notably in the case of Public Sector Undertakings, the various disciplinary authorities are prescribed through the orders and instructions from time to time which, after issue, from an integral part of the disciplinary rules of the organization concerned.
It is therefore essential to look into the relevant disciplinary rules to which the accused employee is subject and the orders and instruction issued there under, to locate his disciplinary authority.

Since the disciplinary authorities are declared with reference to the penalties they can impose for quite large number of employees here shall be more disciplinary authorities than one. This can happen as follows:

Firstly, in the case of those employees of the Union or the State Governments who have been appointed by an authority subordinate to the President/Governor, there shall be two disciplinary authorities—one, the President or the Governor, as the case may be, in whose pleasure holds the office; and secondly the authority who has actually appointed him to the service.

Secondly, different disciplinary authorities with reference to the particular penalties which they can impose. Such different authorities are appointed for better administrative control to the subordinate officers who, though do not enjoy the power of appointment but under whose control the employee has actually to function. The power to impose three penalties, namely, dismissal, removal or compulsory retirement, cannot be delegated to a lower authority.

It goes without saying that even in cases where the power to impose minor penalties has been delegated, as mentioned above, the higher disciplinary authority retains his right to impose any penalty on the employee, including minor penalty.
Where there are two disciplinary authorities and an order imposing some penalty which could be made even by the lower authority is, in fact, made by the higher disciplinary authority, the order is perfectly lawful and cannot be challenged on the ground that the employee had lost his right of appeal thereby. The reason is that where the power is bestowed by a statutory rule itself, the considerations like right of appeal become totally irrelevant (Thimmaryappa V. State, AIR 1968 Mysore 296.)

**Disciplinary authority vis-à-vis appointing authority**

The appointing authority has always the power to terminate or dismiss the employee. It is principle of general application that the authority who appoints an employee has the power to dismiss him from service (S.R. Tewari V. District Board, Agra, AIR 1964 SC 19\680; Union of India V. Gurbaksh Singh, AIR 1975 SC 641).

**5.5.8 Disciplinary Authority, King-pin**

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

In a departmental action, the disciplinary authority is the sole judge and he is in the picture throughout from the beginning to 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.

5.5.9 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 employee. 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 satisfy himself as to whether the charged employee 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 failure 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 own 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.

5.5.10 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 may, for the reasons 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. 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 satisfied on the evidence on record, disagree with the Inquiry Officer and arrive at his own findings.

5.5.11 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 Authority 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 Authority 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 of course 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 delegated to a subordinate level. He shall forward a copy of the inquiry report to the employee 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 employee. 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.

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.

5.5.12 “Show Cause Notice”

Article 311(2) of the Constitution was amended in the year 1963 making it necessary to give employee 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 03-01-1977, when the amendment came into force, it was not necessary to give opportunity to the employee 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 employee 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 employee 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 charged employee 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.

5.5.13 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 has 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. The Government has 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 these 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.
5.5.14 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 article of charges and deciding the quantum of penalty, the disciplinary authority should take into account only evidence produced during the inquiry and which the employee had the opportunity to disprove. The order should be signed by the disciplinary authority competent to impose the penalty.

5.5.15 Orders where charges held not proved

Having regard to it’s own findings on the article of charges, if the disciplinary authority is of the opinion that the article of charges have not been proved and that the employee should be exonerated, it will make an order to that effect and communicate it to the employee together with a copy of the report of the Inquiry Officer, it’s own findings on it and brief reasons for it’s disagreement, if any, with the findings of the Inquiry Officer.

5.5.16 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.

5.5.17 Consultation with Public Service Commission

In cases in which it is necessary to consult the Andhra Pradesh
Public Service Commission, the disciplinary authority will forward the
record of the inquiry together with relevant documents to the Public
Service Commission for advice, and it’s 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.

5.5.18 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.
5.5.19 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 it's disagreement, if any, with the findings of the Inquiry Officer;
c) A copy of the advice, if any, given by the Public Service Commission and where the disciplinary authority has not accepted the advice of the 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.

5.5.20 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.

5.5.21 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 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 article of any charges 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 since it 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.

5.5.22 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.

5.5.23 Time limits

The CCA Rules fixed time limit’s for various stages of action; for instance 10 working days is the time limit for appearance of the charged employee and submission of his statement of defence, under sub-rule (4) of rule 20. These time-limit’s 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. The disciplinary authority/inquiry officer should feel responsible and pay adequate attention and take timely action.

5.5.24 Stay by Court

Procedings 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.

5.5.25 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 merit's of the charge were never investigated, fresh departmental inquiry can be held on same facts.

5.5.26 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.

5.5.27 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 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. 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).

5.5.28 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.

5.5.29 Procedure for imposing Major Penalties

As soon as a decision has been taken by the competent authority to start disciplinary proceedings for a major penalty, that authority will draw up on the basis of evidence material gathered during the preliminary investigation, the charge sheet in the form prescribed, duly accompanied by a statement of articles of charge, statement of imputations of misconduct or misbehavior in support of the articles of charge, list of documents with which article of charges
framed are proposed to be sustained and list of witnesses by whom
the article of charges framed are proposed to be sustained. The
memorandum should be signed by the disciplinary authority

The statement of imputation should give acts of commission
or omission by the employee in support of each charge including
any admission or confession made by him. In particular, in cases
of misconduct / misbehavior, it should mention the rule violated
by him and should be factual. It should be drafted in the third person
and in the past tense.

The list of witnesses should contain the names of those
witnesses who will be able to give positive evidence to substantiate
the allegations. If there are no documents or witnesses, NIL
statements should be appended as Annexure II and IV to the charge
sheet.

When disciplinary proceedings are initiated on the complaint
there is no necessity to indicate the name of the complainant unless
he is a material witness in the case. When proceedings are initiated
on the basis of the evidence collected after making investigations
into the complaint there should not be any necessity to indicate the
name of the complainant or the fact that the investigations were
started as a result of the particular complaint.

The charge sheet together with it’s enclosures should be
served in person if he is on duty and his acknowledgement taken
or sent by registered post. If the employee refuses to accept the registered cover containing the same will be deemed to have been duly delivered to him.

For admitting or denying the charges, no inspection of documents is necessary. As a measure to avoid the delay in the disposal of disciplinary case, copies of statements of witnesses cited be supplied to the employee along with the charge sheet, whenever possible.

If in the written statement of defence, all the charges are admitted by the charge sheeted employee the disciplinary authority may take such evidence as it may think fit, record it’s findings on each charge and take further action on the findings.

5.5.30 Appropriate Disciplinary Authority in Major Penalty Proceedings

None of the major penalties can be imposed on any employee by an authority subordinate to that by which he was appointed. Under no circumstances, the appointing authority can delegate his power to a subordinate authority. The employee should not be awarded any major penalty by a lower authority because in his judgment the charged employee may not have the same faith.

It is therefore necessary that before any action is initiated with a view to imposing major penalties on an official, it should first be verified by the present disciplinary authority whether or not he is lower rank than the officer who actually appointed the official.
The disciplinary authority in respect of an official is to be determined with reference to his posting at the relevant stage of the disciplinary case and not with reference to his posting and status at the time of commission of the offence.

5.5.31 Procedure for Imposition of a Minor Penalty

On receipt of all the relevant papers connected with the preliminary enquiry, the competent authority should take a decision whether the proceedings should be initiated for major or a minor penalty. In cases in which the authority decides that proceedings should be initiated for imposing minor penalty, the authority will inform the employee in writing of the proposal to take action against him in the form prescribed accompanied by a statement of imputations of misconduct or misbehavior for which action is proposed to be initiated giving him time not exceeding ten days for making representation as the employee may with to make against the proposal. The memorandum should be signed only by the disciplinary authority.

The Inquiry officer should be an officer who is senior to the officer whose conduct is being inquired into. Further disciplinary authority may also nominate a Presenting Officer who would present on it’s behalf the case in support of the articles of charge. Generally, a person belong to the departmental set up who is conversant with the case is appointed as the presenting officer.
Further the accused employee has right to take the assistance of another employee to defend his case. The charge sheeted employee is required to take prior permission of disciplinary authority while giving intimation to this effect to the disciplinary authority.

At the preliminary hearing the charged employee will be required to state categorically whether he pleads guilty to any of the article of charges and if he has any defence to make. If the charged employee fails to appeal in the preliminary hearing, the Inquiry officer may fix the dates and the place for regular hearing. On the date and at the time fixed for the inspection of documents, the charged officer will be given inspection of the same. The inspection will be in the presence of an officer deputed for the purpose and it should be ensured that documents are not tampered with during the course of inspection. The charged employee may keep notes or extracts, but will not be allowed to take photocopies.

During the enquiry the Presenting Officer will produce all documentary evidence and also have his witnesses examined. Normally the Presenting Officer should himself ensure that his witnesses are present. He may in appropriate cases have summons issued by the Inquiry Officer through registered post acknowledgement due. If any person is summoned in his official capacity, the notice should be served through his superior officer.
Notice to private witnesses may be sent direct to them or through the Presenting Officer or the charged employee, as the case may be. After the examination is over, the witnesses may be cross-examined by the charged employee or his defence assistant. This cross-examination, to remove any discrepancies or to prove the reliability. It is the duty of Inquiry officer to see that the witnesses understand the question properly before answering it and to protect them against unfair treatment. He should disallow questions if considered irrelevant.

After the cross-examination, the Presenting Officer can re-examine his witnesses on any points which he has been cross-examined, but not on any new matter unless specifically allowed by the Inquiry Officer, in which case, the charged employee will have the right to further cross-examine the witness.

After the witnesses on behalf of the Disciplinary Authority have been examined, the accused employee will be required to state his defence orally or in writing. The charged employee or his defence assistant will proceed to examine his witnesses who will then be cross-examined by the Presenting Officer and, if necessary will be re-examined by the Presenting Officer.

On completion of the proceedings conducted by the Inquiry Officer, he should prepare his written brief in the matter. The record should include the names of all those present on each hearing. The inquiry officer should record the depositions on separate sheet.
The report of the Inquiry Authority enable the Disciplinary authority in formulating his opinion and it help the disciplinary authority in coming to a conclusion about the guilt of the employee. It's findings are not binding on the Disciplinary Authority who can disagree with them and come to it's own conclusion on the basis of it's own assessment of the evidence forming part of the record of the inquiry.

The disciplinary authority should examine carefully and dispassionately the Inquiring Authority's report and the record of the enquiry and after satisfying it'self that the employee has been given a reasonable opportunity to defend himself will records it's findings in respect of each article of charge saying whether in it's opinion the it stands proved or not. If the disciplinary authority disagrees with the findings of the Inquiring Authority on any article of charge while preparing it's own findings, it should also record reasons for it's disagreements but not so when he agrees.

In case, the disciplinary authority is of the opinion that the charges are against the employee are substantiated, it may proceed to impose upon him any of the major penalties.

5.5.32 Passing of Final Order

Final orders made without mention of reasons for the conclusions reached will be of little assistance to the authority who have powers to decide Appeal or exercise revisionary or review.
After the conclusion of disciplinary proceedings the where it is considered by the Disciplinary Authority that employee concerned should be punished while imposing major / minor penalty, orders can be passed accordingly and be communicated to him.

Past good or bad conduct of the employee can be taken into consideration while awarding penalty. If the previous bad record, punishment etc. is proposed to be taken into account in deciding the quantum of penalty to be imposed, a specific charge it should be in the charge sheet it’self so that such past bad record can be mentioned in the order of penalty otherwise it would vitiate the proceedings.

5.5.33 Appeal, Revision and Review

The order passed by the disciplinary authority based on the findings of inquiring authority imposing any of the statutory penalties the employee can make appeal to appellate authority in case he is not satisfied with the decision. If the Appellate Authority does not satisfy him then he may approach to Reviewing Authority. Under the following circumstances no appeal lies.

i] Any order made by President.

ii] Any order of interlocutory nature or of the nature of step-in aid or the final disposal of disciplinary proceedings other than an order of suspension.
Any order passed by inquiry authority in the course of an inquiry.

The President being the highest authority it is but natural that no appeal shall lie against the order passed by him. It is well known rule that an appeal lie to an authority higher than one who made the order appealed against. Similarly it stands to reason that there should be no right of appeal against an order of interlocutory nature or in the nature of step-in-aid. It also provide that there shall be no appeal against the order of inquiry authority. The rationale behind these rules is appeals are allowed against the order passed by the inquiry authority during the conduct of the inquiry. Then the inquiry will take a very long time to complete. Since every order of the inquiry authority is likely to be challenged by the charged employee. Thus the inquiry can be frustrated for an indefinite period thereby subverting the whole process.

5.5.34 Order against which appeal lies

In the following order appeal can be made:

i] An order of suspension made or deemed to have been made.

ii] An order imposing any of the penalty specified in the rule whether made by disciplinary authority or by any appellate authority or reviewing authority.

iii] An order enhancing any penalty.

iv] An order, which denies or varies to his disadvantage his pay,
allowances, pension or other conditions of service as regulated by rules or interprets to his disadvantage the provision of any such rule or agreement.

An order stopping him at efficiency bar in time scale of pay on the ground of his unfitness to cross the bar. Reverting him while officiating in a higher service, grade of post to a lower service, grade or post otherwise than as penalty. Reducing or withholding the pension or denying the maximum pension admissible to him. Determining the substance and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension.

Determining whether or not the period from the date of his suspension or from the date of his dismissal removal, compulsory retirement or reduction to a lower service, grade, time scale of pay, post or stage in a time scale of pay to the date of his reinstatement or restoration to his service, grade or post shall be treated as a period spend on duty for any purpose.

Some times a doubt raise whether an appeal against supersession in the matter of promotion can be considered. It has been clarified by the Ministry of Home Affairs that an appeal against supersession in the matter of promotion will
fall within a purview of rules and appellate authority in such cases would be indicated in rule.

5.5.35 Can Appeal once made be withdrawn

It is the discretion to the authority competent to decide the appeal or petition to allow the appeal or petition to be withdrawn after it has been submitted to it. Since on appeal or petition the penalty imposed can also be enhanced. The competent authority shall consider whether it is a fit case of enhancement for penalty. In enhancement of penalty is called for it is open to the competent authority to refuse to allow withdraw an appeal or petition. The discretion in the matter rest entirely with the competent authority. An appeal should be preferred within a period of forty-five days from the date on which the order is delivered to the employee. It should be complete in all respects and contain all material statements and arguments on which reliance is placed. It should not contain disrespectful and improper language. The Appellate Authority is empowered to entertain appeal preferred after the expiry of the said period, if it is satisfied that the employee had sufficient cause for not preferring the same in time. There is no provision in the rules for withholding of an appeal on any ground.

5.5.36 Appellate Authority

The Appellate Authority to whom the appeal is addressed direct, on receipt of the relevant documents of the disciplinary proceedings complete in all respects, should consider the same to see:
i] Whether the procedure laid down in the rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution or in the failure of justice;

ii] Whether the findings of the Disciplinary Authority are warranted by the evidence on the record of the case; and

iii] Whether the penalty or the enhanced penalty imposed is adequate, inadequate or server.

It is the duty of Appellate Authority to consider the relevant factors. It is not the requirement of Article 311 (2) or of the rules of natural justice that in every case the Appellate Authority should state its own reasons except where it discharges with the findings of the Disciplinary Authority. It is however necessary that all the points raised by the appellant are summarized in the order and are also logically discussed to show how they are acceptable or otherwise. The appellate order should discuss thoroughly the following points:

a] the procedural aspects as well as the justness of the findings of the Disciplinary Authority with reference to the admissible evidences;

b] a proper discussion of the points raised in the appeal; and

c] any objective assessment of the lapse on the part of punishable official with a view to coming to a decision that the charge(s) had been established and that the penalty is appropriate/
adequate and does not require to be either toned down or enhanced.

**Revision:**

d] After the Appellate Authority passes the judgment and if the Government Servant is not satisfied with it, he has been given an opportunity to seek the help of an authority higher than the Appellate Authority.

1] There is no time limit for the revision, except in the case of Appellate Authority, where the revised order has to be passed within six month of the date the order proposed to be revised. This power can be invoked irrespective of the fact whether an appeal/revision petition has been submitted to authority concerned.

2] No proceedings for revision should be started till the expiry of the period of limitation of appeal or, the disposal of the appeal, where any such appeal has been preferred. An application for revision should be dealt with the same manner as if it was an appeal under the rules.

**5.5.37 Report of Inquiry Authority**

At the close of inquiry the inquiring authority has to consider the entire record of the case, assess the value to be placed on each piece of evidence adduced during the inquiry and record its findings in the form of a report, to be submitted, duly signed by the inquiring authority.
The various disciplinary rules require that the inquiry officer should consider the record, appraise the evidence and record his findings on each charge stating it clearly whether or not, in his opinion, the charge(s) can be held to have been proved against the delinquent. The Supreme Court has put much emphasis on “correct assessment of evidence on an objective analysis based on cast iron logic” [Girdhari Lal V. Assistant Collector, (1970) S SCC 530]. The conclusion reached by the inquiry officer must be based on evidence and not irrelevant considerations, and not irrelevant consideration, suspicion etc. His conclusion must flow logically out of the evidence on record. There should be no room for irrelevant consideration and suspicious (Union of India Vs. S.C. Goyal, AIR 1964 SC 364). Further while arriving his conclusion the inquiry officer must confined himself to the records of the case prepared during the course of inquiry, nothing what happened before or after the formal inquiry proceedings should influence his mind. (State of Assam Vs. M.K. Das SLR 1970 SC 444). He must not also allow any pressure or influence to bear upon his mind in the discharge of his duties. Any communication addressed to him for the purpose, in open or confidentially by the charged employee or the department would amount a serious interference in the administration of justice (Jyoti Narayan Vs. Sinha AIR 1954 Patna 289). He should also avoid to give any weightage whatsoever to his knowledge of the matter against the employee (State of UP Vs. Mohmad Noor AIR 1954 SC 86).
The supreme court has held that unless the statutory rule or the specific order under which you are appointed required, the inquiring officer need not make any recommendation regarding the punishment which may be imposed on the charge employee. However, if he makes any such recommendation, like his other findings it shall be intended merely to supply material for consideration of the disciplinary authority. In fact some authorities hold that inquiry officer is only the fact finding authority and has no jurisdiction even to dub any particular action of the employee as misconduct. It is entirely for the disciplinary authority to decide the question of guilt and punishment (J.J. Modi Vs. State AIR 1964 Gujrat 197).

The report of inquiry must contain reason for the findings. If this is not done the report will neither be of much use of the disciplinary authority who has consider it in order to arrive at his decision nor to the employee concerned who has to be supplied with a copy thereof. The report should include finding on each charge with reason therefore (A. L. Kalra Vs. E & E Corporation Ltd. AIR 1984 SC 1361).

Where the statutory rules so authorize, the inquiry authority may record it’s findings on a charge different from the original article of charge but it cannot record such finding unless either they are based on a clear admission by the charged officer or he was specifically granted and opportunity to meet such a change during the inquiry. It goes without saying that such different / additional charge must be incidental
to the main charge. The inquiring authority have no power to record finding on a fresh or new charge which should appropriately be the subject matter of another charge sheet. Further, if the main charge fail the delinquent cannot be punished for some lapse which stand on entirely different footing.

In the following circumstances an employee cannot be dismissed or removed from the service:

a] Civil Servant of the Union or States: Article 311 (1) of the Constitution provides that no civil servant of the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

b] Employees of Public Sector Undertaking, Government companies: The principle have the application only if there is a specific provision in this regard in the statutory rules of the organization concerned. In the absence of such a provision the protection cannot be claimed. The Supreme Court holds the reason that the protection is not based on natural justice. The Principle shall have applicable only if it is expressly written in the article of association.

c] Armed forces of the Union : Since armed forces of the union are not covered by the provision of article 311 (1) of the constitution, the protection can be available to them only if there is an expressed provision in any enactment or the rules.
d) Civilians in defence services: They are also not covered by Article 311 of the constitution. But the protection become available to them by the virtue of Rule 12 of Central Civil Services which specifically provides that no major punishment shall be awarded by an authority subordinate to the authority who appointed him.

**Adhoc- Disciplinary Authority:**

Where it becomes necessary the power to dismiss or remove can be conferred on an officer other than the appointing authority provided he is not subordinate in the rank to the appointing authority.

**Order made in the name of President:**

It cannot be said that where the President or Governor is the appointing authority, he is personally bound to make order of dismissal or removal. The correct position is that an order in the name of President is authenticated by an officer authorized under Article 77 (2) of the constitution. Hence, such an order is of the President.

5.5.38 **The penalties which can be imposed by the Disciplinary Authorities**

The penalties, which can be imposed on the employees, are specified in the disciplinary rules applicable to them. These penalties are generally divided into two categories- Major and Minor. The distinction between the two lies in the procedure to be followed for their imposition. While in the case of minor penalties a summary procedure has been prescribed to be followed, the prescribed procedure for
imposing major penalty is a lengthy one including oral inquiry is an essential part.

**Minor Penalty**

There are five types of minor penalties –

1] Censure
2] Withholding of promotion
3] Recovery from pay
4] Reduction to lower stage in the time scale of pay for less than 3 years without cumulative effect and not adversely effecting his pension.
5] Withholding of increment of pay

**Major Penalty**

There are five types of major penalties

1] Reduction to a lower time scale of pay.
2] Reduction to a lower time scale of pay grade post or Service.
3] Compulsory Retirement.
5] Dismissal from Service.

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