

Copy of O.M.No.39/40/52-Ests., dated the 4th October, 1952 from Govt. of India Ministry of Home Affairs to All the Ministries of the Government of India, etc. etc.

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Subject:- Departmental Proceedings against Government Servants - Steps for expeditious and better disposal of - nomination of specified officers in the Ministries/Depts. to be in charge of all disciplinary inquiries in the Ministry/Department.

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There have been repeated references in Parliament and in Parliamentary committees to the delays in the disposal of departmental proceedings against delinquent Government Servants, and to cases in which, on technical and procedural grounds, the accused persons ultimately escape the punishments they deserve. The general impressions that the prescribed procedure is too elaborate and requires to be replaced by something more simple and summary.

2. After careful consideration the Ministry of Home Affairs have come to the conclusion that this impression is not wholly justified. The procedure prescribed in Rule 55 of the Civil Services (Classification Control and Appeal) Rules is applicable only to cases in which the charges are so serious as to call for one of the major punishments, i.e. Dismissal, Removal, or Reduction in Rank etc. (A more a summary procedure is already available for less serious cases). The provisions of Rule 55 are merely designed to ensure compliance with a salutary principle of justice and public policy which has also been incorporated in article 311 of the Constitution of India, viz. that no man should be condemned and punished without a reasonable opportunity to defend himself. The prescribed procedure therefore requires that the accused officer should be told in the form of written charges exactly what he is alleged to have done and on what evidence oral or documentary the allegations are based; that he should have an opportunity to inspect the documentary evidence, to test the oral evidence by cross examination and to furnish such evidence as he may wish to adduce in his own defence. If, as a result of the enquiry, it is decided that the officer should be dismissed, removed or reduced in rank, he has to be given a further opportunity to show cause, if any, against the actual punishment proposed. Anything less than this would amount to a denial of the 'reasonable opportunity' which is guaranteed by article 311.

3. There is, however, nothing in these minimum requirements which must ~~necessity~~ lead to unduly protracted proceedings or to a failure to secure just punishment to the guilty. The officer conducting a departmental inquiry has to hold the balance even between the interests of the State and the avoidance of injustice to the accused. He is free to take a responsible, reasonable and prudent view of the facts and circumstances of the case and is not bound by the rigid limitations regarding the admissibility of evidence and the degree of proof applicable to prosecutions before Criminal Courts. Provided the inquiry officer gives the necessary time and effort, confines his attention to the mainpoints at issue and firmly resists any attempt by the accused officer to introduce irrelevancies or to adopt deliberate dilatory tactics - there is no reason why satisfactory expedition in disposal should not be achieved in all cases without departing from the prescribed procedure.

4. The various factors which may contribute to undue delays and faulty disposal are :-

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- (1) Officers conducting the departmental enquiries may be preoccupied with other duties that they can only spare a few hours at a time at long intervals for the enquiry itself.
- (ii) Unfamiliarity with the procedure or inadequate appreciation of the difference between a departmental enquiry and a trial in a Criminal Court, may lead to over-elaboration, or lack of firmness in dealing with dilatory tactics.
- (iii) Avoidable delay may some times occur at the stage when the enquiry officer has submitted his report and the appropriate authorities have to make up their minds whether the findings are to be accepted and if so what the punishments should be.
- (iv) Where, under the rules, consultation with the Union Public Service Commission is necessary some undue delay may occur in making the reference to the Commission, and in the consideration of the case by that body.

5. As regards the factors mentioned in (i) and (ii) above the Ministry of Home Affairs have considered the feasibility of setting up separate administrative tribunals for enquiring into the more important departmental proceedings. Although such bodies have worked satisfactorily in the States of Uttar Pradesh and Madras, it is felt that Central Government's Machinery is so vast and so widely scattered that a similar experiment will hardly justify the expenditure incurred. In cases of extreme complexity or importance it will always be open to Government to set up special committees of enquiry or to have recourse to the Public Servants Enquiries Act, 1850. For all other departmental enquiries the delays caused by excessive pre-occupation or unfamiliarity with the procedure could be easily avoided by adopting the following measures :-

- (i) In each Ministry or Department a specified officer or officers of appropriate rank shall be nominated and ear-marked for the purpose of conducting all the departmental enquiries arising within that Ministry/ Department.
- (ii) As soon as occasion arises for taking up such an enquiry the nominated officer will be relieved of his normal duties to such extent as may be necessary to enable him to devote full and careful attention to the completion of the enquiry and the submission of his report. During this time the work of which the officer is relieved may be distributed amongst other officers.
- (iii) The nominated officers should familiarize themselves with the rules and essential procedural requirements and appreciate the difference between Departmental inquiries and Trials in the Criminal Courts. The maintenance of close personal contacts with the Ministry of Home Affairs will enable them quickly to resolve any doubts or difficulties which may arise.

6. As regards the causes of delay mentioned in (iii) and (iv) of para. 4, much improvement will be effected if, (a) it is impressed upon all concerned that both public interest as well as humanitarian considerations demand, that no avoidable delay should occur in the disposal of disciplinary cases; and (b) any failure to give such cases due priority is itself regarded as a

dereliction of duty and suitably dealt with.

7. As to the possibility of delay occurring in the consideration of a case and tendering of their advice by the Union Public Service Commission the Ministry of Home Affairs are in correspondence with the Commission and they have every hope that satisfactory arrangements will be made to secure all possible expedition on the part of the Commission.

8. The Ministry of Finance/etc. are accordingly requested to take immediate action on the instructions contained in paras 5 and 6 above. The names of the officer or officers nominated in term of para. 5 may kindly be communicated to this Ministry by the 31st October 1952.

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