

No. 39/40/70-Est-2)
Government of India/Bharat Sarkar
Cabinet Secretariat/Mantri Mandal Sachivalaya
Department of Personnel/Karmik Vibhag

NEW DELHI-110001, the

9th November, 1972
18 Karaka, 1894

OFFICE MEMORANDUM

Subject:-Departmental Inquiries against Government servants - appointment of Inquiring Authority.

...

The undersigned is directed to say that one of the items considered by the National Council set up under the scheme of Joint Consultation and Compulsory Arbitration in its meeting held in September, 1970 was a proposal of the Staff side that the disciplinary inquiry should, as a rule, be conducted by a person who should be free from all influences, official or otherwise, of the disciplinary authority.. It was further suggested that the rules should be amended suitably so that departmental inquiries are invariably conducted by a person belonging to another department. As a result of subsequent discussions in the National Council, a Committee of the Council was set up to consider the matter in all its aspects. In the Committee the Staff Side urged that it was necessary in a departmental inquiry to ensure that the proceedings were conducted in an objective manner and that the requirement of natural justice would be watered down if the inquiry is held by the disciplinary authority itself or is entrusted to an Inquiry Officer who is subordinate to, or is under the direct influence of the disciplinary authority. According to them departmental inquiries should invariably be entrusted to an independent and impartial body or tribunal and that considerations of the expenditure involved in providing such an independent forum should not be the prime factor in the dispensation of Justice. Alternatively, the Inquiry Officer should invariably belong to a wing/office/department different from the one to which the alleged delinquent employee belongs.

2. As regards the point raised by the Staff Side that the Departmental Inquiry should be entrusted to an independent impartial body or tribunal, it was clarified that inquiries in disciplinary proceedings against gazetted officers of all grades involving lack of integrity or an element of vigilance are alone entrusted to Commissioner for Departmental Inquiries under the Central Vigilance Commission and other cases of disciplinary proceedings involving purely.

...2/-

administrative or technical lapses, are not referred to the said Commissioner. It was also not possible to entrust the departmental inquiries against non-gazetted employees to the Commissioner for Departmental Inquiries in view of the very large number of disciplinary cases of such employees coming up every year. It was further pointed out that the existing instructions contained in Ministry of Home Affairs (now Department of Personnel) O.M. No.6/26/60-Ests(A) dated 16th February 1961 (copy enclosed) already emphasise the desirability of only disinterested officers being appointed as Inquiry Officers in departmental proceedings. It is also provided therein that while there is no bar to the immediate superior officer holding an inquiry, as a rule, persons who undertake this task should not be suspected of any bias in such cases and that the authorities concerned should bear this in mind before an Inquiry Officer is appointed in a disciplinary case.

3. A suggestion was made by the Staff Side that where a representation by the delinquent official against the appointment of a particular Inquiry Officer on grounds of bias, is rejected by the disciplinary authority, it should be open to the delinquent official, to prefer an appeal to the appellate authority. It was pointed out that though there was no provision in the CCS(CCA) Rules for filing an appeal against an order appointing a person as Inquiry Officer in a disciplinary proceeding, such an order could, nevertheless, be reviewed under the said Rules. The Staff Side desired that in view of this position, the Inquiry officer should stay the proceedings if an application for review is filed by the delinquent official. It was agreed that obviously this should be done and the attention of the competent authorities could be drawn to the need for staying the proceedings once a review petition was submitted in such cases.

4. It has accordingly been decided that whenever an application is moved by a Government servant against whom disciplinary proceedings are initiated under the CCS(CA) Rules against the inquiry officer on grounds of bias, the proceedings should be stayed and the application referred, alongwith the relevant material, to the appropriate reviewing authority for considering the application and passing appropriate orders thereon. It has also been decided to reemphasize to all Ministries/Departments the following instructions contained in paragraph 5 of M.H.A. O.M. No.39/40/52-Ests, dated the 4th October, 1952, on the subject to expeditious and better disposal of departmental proceedings against

Government servants:-

- i) In each Ministry or Department specified officer or officers of appropriate rank shall be nominated and earmarked for the purpose of conducting all the departmental inquiries arising within that Ministry/ Department.
- ii) As soon as occasion arises for taking up such an inquiry, 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 enquiries and the submission of his report. During this time the work of which the officer is relieved may be distributed amongst other officers.

5. The Ministry of Finance etc. are accordingly requested to bring to the notice of the various disciplinary authorities the need for staying the proceedings till such time as the review petition, if any, submitted by a Government servant against the appointment of the Inquiry Officer is disposed of, as agreed to in the Committee of the National Council vide paragraph 3 above. They are also requested to keep in view the instructions contained in the Ministry of Home Affairs (now Department of Personnel) O.M.No. 6/26/60-Ests(A) dated 16th February, 1961 and No. 39/40/52-Ests dated the 4th October, 1952 referred to the appointment of Inquiry officers in disciplinary proceedings.

Sd/-P.S. Venkateswaran
Under Secretary to the Government of India.

To

All Ministries/Departments of Government of India (with usual number of spare copies).

No.39/40/70-Ests(A)

Dated the 9 Nov.,1972

Copy also forwarded for information & necessary action to:-

1. Central Vigilance Commission, New Delhi.
2. Union Public Service Commission, New Delhi.etc.
etc.

...4/-

:4:

3. Comptroller & Auditor General, New Delhi.
4. Director, Central Bureau of Investigation,
New Delhi.
5. All Union Territory Administrations.
6. All Chief Vigilance Officers.

Sd/-P.S. Venkateswaran
Under Secretary to the Government of India.

Baldev/-