

CONFIDENTIAL

No.134/20/68-AVD  
GOVERNMENT OF INDIA  
Ministry of Home Affairs  
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New Delhi, 11, the 28th August, 1968  
6th Bhadra, 1890

OFFICE MEMORANDUM

Subject:- Disciplinary proceedings - Consideration of past bad record for purpose of imposition of penalty.  
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A question has arisen whether past bad record of service of an officer can be taken into account in deciding the penalty to be imposed on the officer in disciplinary proceedings, and whether the fact that such record has been taken into account should be mentioned in the order imposing the penalty. This has been examined in consultation with the Ministry of Law. It is considered that if previous bad record, punishment etc. of an officer is proposed to be taken into consideration in determining the penalty to be imposed, it should be made a specific charge in the chargesheet itself, otherwise any mention of the past bad record in the order of penalty unwittingly or in a routine manner, when this had not been mentioned in the chargesheet, would vitiate the proceedings, and so should be eschewed.

2. In this connection attention is invited to the following extract from the judgement of the Supreme Court in the State of Mysore Vs. K. Wonche Gowda (AIR 1964 SC 506):-

"We .....hold that it is incumbent upon the authority to give the Government servant at the second stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is based on his previous punishments or his previous bad record, this should be included in the second notice so that they may be able to give an explanation...

In the present case the second show cause notice does not mention that the Government intended to take his previous punishments into consideration in proposing to dismiss him from service. On the contrary, the said notice put him on the wrong scent, for it told him that it proposed to dismiss him from service as the charges proved against him were grave... indicate that the show cause notice did not give the only reason which influenced the Government to dismiss the respondent from service. This notice clearly contravened the provisions of Art. 311(2) of the Constitution as interpreted by Court."

3. These observations were made by the Supreme Court in the context of the provisions of Article 311(2) of the

constitution before its amendment by the Constitution (Fifteenth Amendment) Act, 1963. Under the amended Article, at the stage of show-cause notice the Government servant has to be given a 'reasonable opportunity' of making representation on the penalty proposed, but only on the basis of evidence adduced during the enquiry. This would indicate that ~~the~~ at the second stage, the procedure should be limited only to the proposed penalty on the basis of the proved charges and additional material in the form of past bad record etc. can not be introduced. If such matter is to be introduced, the Government servant must have a right to make his representation on those matters and for that purpose to call for confidential record and even witnesses to establish mitigating circumstances like his subsequent good conduct. This will be contrary to amended Article 311(2) which clearly limits the right of representation "only on the basis of evidence adduced during such enquiry". This cannot be one-sided restriction and pre-supposes that the penalty is proposed only on the basis of the charges inquired into, without any additional factors being taken into consideration. Accordingly if past bad record is proposed to be taken into account in determining the penalty to be imposed, it should be made subject matter of a specific charge in the charge-sheet itself. If it is not so done, it cannot be relied upon after the disciplinary authorities, and/or at the time of imposition of penalty.

4. This may be brought to the notice of all Disciplinary Authorities for information and guidance.

Sd/- (R.C. Joshi)  
UNDER SECRETARY TO THE GOVT. OF INDIA.

To

All Ministries of the Government of India  
(Chief Vigilance Officers).

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