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Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel and Training
ESTT.(Estt. A-III)
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(Dated 29 March, 2023)

OFFICE MEMORANDUM

Handling of Disciplinary Proceedings in respect of Central Civilian Employees

Handling of Disciplinary Proceedings in respect of Central Civilian employees

Department of Personnel and Training has issued various instructions from time to time on handling of disciplinary proceedings. These instructions were recently consolidated in the form of 8 OMs, as enlisted below, with a view to facilitate the stakeholders to provide one-stop guidance in handling disciplinary proceedings. However, to provide more ease in accessing these guidelines, these have now been amalgamated and brought out at one place as under:

(I) Procedural aspects during the course of inquiry under Rule 14 of the CCS (CCA) Rules.

(II) Clarification/ Interpretation of penalties under CCS (CCA) Rules, 1965

(III) Simultaneous action of prosecution and initiation of departmental proceedings

(IV) Sharing of advice of UPSC with the Charged Officer

(V) Special Procedure in Disciplinary Action

(VI) Disciplinary Jurisdiction of CAT/Election Commission of India

(VII) Suspension

(VIII) Sealed Cover Procedure
(IX) Vigilance Clearance for obtaining passport

(I) PROCEDURAL ASPECTS DURING THE COURSE OF INQUIRY UNDER RULE 14 OF THE CCS (CCA) RULES

Department of Personnel and Training has issued several executive instructions on the various matters concerning procedural aspects during the course of inquiry under CCS (CCA) Rules, 1965. These instructions, usually in the form of Office Memorandum, are circulated amongst the stakeholders for facilitating them in the proper implementation of the rules/procedures regarding handling disciplinary proceedings with a view to provide easy access to the stakeholders. The essence of these instructions in the matter has been summarized in the following paras for guidance and better understanding: -

2. Inquiring Authority (Inquiry Officer)-

2.1 Rule 14(2) of the CCS (CCA) Rules, 1965:

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

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

Explanation.—

(i) Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the disciplinary authority.
(ii) Where the disciplinary authority appoints a retired Government servant as inquiring authority, any reference in sub-rule (7) to subrule (20) and in sub-rule (22) shall include such authority.

[Rule 14(2) of the CCS (CCA) Rules, 1965]

2.2 Rule 14(5) of the CCS (CCA) Rules, 1965:

"*5 (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary so to do, appoint, under sub-rule (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in rule 15.*

(b) If no written statement of defence is submitted by the Government servant, the disciplinary authority may itself inquire into the articles of charge, or may, if it considers it necessary to do so, appoint, under subrule (2), an inquiring authority for the purpose.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

Explanation- For the purposes of this rule, the expression 'Government servant' includes a person who has ceased to be in Government service."

[Rule 14(5) of the CCS (CCA) Rules, 1965]

2.3 The following measures had been suggested to the various Ministries/Departments in regard to the appointment of Inquiry officers in the context of avoiding delays in departmental proceedings caused by excessive preoccupation of the Inquiry Officer and his unfamiliarity with the prescribed procedures:-

(i) In each Ministry/Department, a specified officer(s) of appropriate rank shall be nominated and earmarked for the purpose of conducting all the departmental enquiries arising within that Ministry/Department.

(ii) As soon as an occasion arises for taking up such an enquiry, the nominated officer will be relieved of his normal duties to such an 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 to be 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 enquiries and trials in the criminal courts. The maintenance of close personal contact with the Ministry of Home Affairs (now Deptt. of Personnel) will enable them quickly to resolve any doubts or difficulties which may arise.

[Para 2 of the OM No. 39/3272-Ests.(A) dated 13.12.1972]

(iv) Where, the volume of work in connection with the departmental inquiries is so large as to justify the appointment of a whole-time officer for the purpose of conducting departmental inquiries, Ministries/ Departments may consider the question of appointing a whole-time officer, fully trained in conducting disciplinary proceedings for a department or a group of offices or for a region.

[Para 3 of the OM No. 39/3272-Ests.(A) dated 13.12.1972]

2.4 Only disinterested officers should be appointed as Inquiry Officers in departmental proceedings. There is no bar to the immediate superior officer holding an inquiry but, as a rule, the

person who undertakes this task should not be suspected of any bias in such cases. The authorities concerned should bear this in mind before an Enquiry Officer is appointed in a disciplinary case.

[Para 4 of the OM No. 6/26/60-Ests (A) date 16.02.1961]

2.5 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 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 already emphasize 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.

[Para 2 of OM No. 39/40/70-Ests.(A) dated 09.11.1972]

2.6 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.

[Para 3 of the OM No. 39/40/70-Ests.(A) dated 09.11.1972]

2.7 Bias Petition against IO: 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.

[Para 4 of the OM No. 39/40/70-Ests.(A) dated 09.11.1972]

2.8 According to Rule 14(5) of the CCS (CCA) Rules, 1965, the disciplinary authority may itself inquire into the charges against the accused Government servant or appoint an Inquiry officer for the purpose. However, it should be possible in a majority of cases, and the more serious ones at any rate, to ensure that the disciplinary authority himself does not conduct the inquiry. It may still be not

practicable to ensure in all cases that the disciplinary authority himself would not be the Inquiry Officer. Such a course may be necessary under certain circumstances particularly in small field formations where the disciplinary authority as well as the Inquiry officer may have to be one and the same person. It has accordingly been decided that unless it is unavoidable in certain cases as mentioned above, the disciplinary authority should refrain from being the Inquiry Officer and appoint another officer for the purpose.

[Para 3 of the OM No. 35014/1/76-Estt.(A) dated 29.07.1976]

2.9 IO senior from the CO: DoPT, vide OM No. 7/1/70-Est.(A) dated 06.01.1971, requested all the Ministries/ Departments to note the observations of the Committee on Subordinate Legislation (Fourth Lok Sabha), which examined the question of appointment of inquiry officers to conduct oral inquiry into the charges leveled against delinquent officer under CCS (CCA) Rules, 1965. The Committee observed that though they agree that it may not be possible to entrust always inquires against delinquent officer to gazette officers the inquiries should be conducted by an officer who is sufficiently senior to the officer whose conduct is being inquired into as inquiry by a junior officer cannot command confidence which it deserves.

[OM No. 7/1/70-Est.(A) dated 06.01.1971]

3. Examination, Cross examination and re-examination of Witnesses-

3.1 Rule 14(14) of the CCS (CCA) Rules, 1965:

> "*(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to reexamine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.*"

[Rule 14(14) of the CCS (CCA) Rules, 1965]

3.2 Whether statements made by the witnesses during the preliminary inquiry/investigation can be straightway taken on record as evidence in examination-in-chief at oral inquiries-

(i) On considering the observations made by the Supreme Court in certain cases it may be legally permissible and in accord with the principles of the natural justice to take on record the statements made by witnesses during the preliminary inquiry/investigation at oral inquiries, if the statement is admitted by the witness on its being read out to him. It is felt that by adopting this procedure it should be possible to reduce the time taken in conducting departmental inquiries. It has, therefore, been decided that in future, instead

of recording the evidence of the prosecution witnesses de novo, wherever it is possible, the statement of a witness already recorded at the preliminary inquiry/investigation may be read out to him at the oral inquiry and if it is admitted by him, the cross-examination of the witness may commence thereafter straightaway. A copy of the said statement should however, be made available to the delinquent officer sufficiently in advance to at least three days before the date on which it is to come up at the inquiry.

(ii) As regards the statements recorded by the Investigating Officers of the C.B.I., which are not signed, it has been decided that the statement of the witness recorded by the Investigating Officer will be read out to him and a certificate will be recorded there under that it had been read out to the person concerned and had been accepted by him.

[Para 2 & 3 of the OM No. 134/7/75-AVD-I dated 01.06.1975]

3.3 Witnesses produced by or on behalf of the disciplinary authority in a disciplinary proceeding shall be examined by or on behalf of the presenting officer and may be cross-examined by or on behalf of the Government servants, and the presenting officer would also be entitled to re-examine the witnesses on any points on which they have been leave of the inquiring authority. Doubts have been expressed in some quarters if cross-examination by or on behalf of the Government servant could be allowed after the presenting officer has re-examined the witnesses. It is hereby clarified that if re-examination by the presenting officer is allowed on any new matter not already covered by the earlier examination/cross-examination, a cross-examination on such new matters covered by the re-examination may also be allowed to meet the ends of natural justice.

[OM No. 7/11/70-Est.(A) dated 24.09.1970]

4. Supply of Documents to the ChargedOfficer

4.1 Rule 14(11) of the CCS (CCA) Rules, 1965:

"(11) The inquiring authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence:

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3);
(ii) submit a list of witnesses to be examined on his behalf;

NOTE- If the Government servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

(iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in sub-rule (3).

NOTE.- The Government servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government."

[Rule 14(11) of the CCS (CCA) Rules, 1965]

4.2 Hon'ble Supreme Court in the matter of Raizada Trilok Nath Vs. the Union of India, decided that failure to furnish copies of documents such as the First Information Report, and statements recorded during investigation amounts to a violation of Article 311(2) of the Constitution.

[Para 1 of the OM No. 30/5/61-AVD dated 25.08.1961]

4.3 The right of access to official records is not unlimited and it is open to the Government to deny such access if in its opinion such records are not relevant to the case, or it is not desirable in the public interest to allow such access. The power to refuse access to official records should, however, be very sparingly exercised. The question of relevancy should be looked at from the point of view of the defence and if there is any possible line of defence to which the document may, in some way be relevant, though the relevance is not clear to the disciplinary authority at the time that the request is made, the request for access should not be rejected. The power to deny access on the ground of public interest should be exercised only when there are reasonable and sufficient grounds to believe that public interest will clearly suffer. Cases of the latter type are likely to be very few and normally occasion for refusal of access on the ground that it is not in public interest should not arise if the document is intended to be used in proof of the charge and if it is proposed to produce such a document before the Inquiry Officer, if an enquiry comes to be held. It has to be remembered that serious difficulties arise when the Courts do not accept as correct the refusal by the disciplinary authority, of access to documents. In any case, where it is decided to refuse access, reasons for refusal should be cogent and substantial and should invariably be recorded in writing.

[Para 2 of the OM No. 30/5/61-AVD dated 25.08.1961]

4.4 Government servants involved in departmental enquiries often ask for access to and or supply of copies of -

1) documents to which reference has been made in the statement of allegations;
2) documents and records not so referred to in the statement of allegations but which the Government servant concerned considers are relevant for the purposes of his defence;

3) statements of witnesses recorded in the course of -

   i. a preliminary enquiry conducted by the department; or

ii. investigation made by the Police.

4) Reports submitted to Government or other competent authority including the disciplinary authority by an officer appointed to hold a preliminary inquiry to ascertain facts;

5) reports submitted to Government or other competent authority including the disciplinary authority, by the Police after investigation.

[Para 3 of the OM No. 30/5/61-AVD dated 25.08.1961]

4.5 A list of the documents which are proposed to be relied upon to prove the charge and the facts stated in the statement of allegations should be drawn up at the time of framing the charge (This will incidentally reduce the delay that usually occurs between the service of the charge-sheet and the submission of the written statement). The list should normally include documents like the First Information Report if there is one on record. Anonymous and pseudonymous complaints on the basis of which inquiries were started need not be included in the list. The list so prepared should be supplied to the officers either along with the charge-sheet or as soon thereafter as possible. The officer should be permitted access to the documents mentioned in the list if he so desires.

[Para 4 of the OM No. 30/5/61-AVD dated 25.08.1961]

4.6 If the officer requests for any official records other than those included in the list, the request should ordinarily be acceded to in the light of what has been stated in para 4.3 above.

[Para 5 of the OM No. 30/5/61-AVD dated 25.08.1961]

4.7 While there is no doubt that the Government servant should be given access to various official records like documents to which reference has been made in the statement of allegations and documents and records which the Government servant concerned considers are relevant for the purposes of his defence though the relevancy is not clear to the disciplinary authority, doubts very often arise whether official records include the documents mentioned at items, 4 and 5 in para 4.4 above. Reports made after a preliminary enquiry, or the report made by the Police after investigation, other than those referred to in clause (a) of Sub-Section 1 of Section 173 of the Code of Criminal Procedure, 1898, are usually confidential and intended only to satisfy the competent authority whether further action in the nature of a regular departmental inquiry or any other action is called for. These reports are not usually made use of or considered in the inquiry. Ordinarily even a reference to what is contained in these reports are not made in the statement of allegations. It is not necessary to give access to the Government servant to these reports. (It is necessary to strictly avoid any reference to such reports in the statement of allegations as, if any reference is made, it would not be possible to deny access to these reports; and giving of such access to these reports will not be in public interest for the reasons stated above).

[Para 6 of the OM No. 30/5/61-AVD dated 25.08.1961]

4.8 The only remaining point is whether access should be given to the statements of witnesses recorded in the course of a preliminary enquiry conducted by the department or investigation made by the Police and if so, whether the access should be given to the statements of all witnesses or to the statements of only those witnesses who are proposed to be examined in proof of the charges or of the facts stated in the statement of allegations. These statements can be used only for the purposes of cross-examination and the Government servant is called upon to discredit only those witnesses whose statements are proposed to be relied upon in proof of the charges or of the facts stated in the statement of allegations. As such the Government servant concerned need not be given access to the statements of all witnesses examined in the preliminary enquiry or investigation made by the Police and access should be given to the statements of only those witnesses who are proposed to be examined in proof of the charges or the facts stated in the statement of allegations. In some cases, the Government servant may require copies of the statements of some witnesses on which no reliance is proposed to be placed by the disciplinary authority on the ground that he proposes to examine such witnesses on his side and that he requires the previous statement to corroborate the testimony of such witnesses before the inquiring authority. Previous statements made by a person examined as a witness is not admissible for the purposes of corroboration and access to such statements can safely be denied. However, the law recognises that if the former statement was made at or about the time when the fact took place and the person is called to give evidence about such fact in any proceedings, the previous statement can be used for purposes of corroboration. In such cases, it will be necessary to give access to the previous statements.

[Para 7 of the OM No. 30/5/61-AVD dated 25.08.1961]

4.9 The further point is the stage at which the Government servant should be permitted to have access to the statements of witnesses proposed to be relied upon in proof of the charges or of the facts stated in the statement of allegations. As stated earlier, the copies of the statements of the witnesses can be used only for the purpose of cross-examination and, therefore, the demand for copies must be made when witnesses are called for examination at the oral enquiry. If such a request is not made, the inference would be that the copies were not needed for that purpose. The copies cannot be used at any subsequent stage as those statements are not to be taken into consideration by the disciplinary authority also. Copies should be made available within a reasonable time before the witnesses are examined. It would be strictly legal to refuse access to the copies of the statements prior to the evidence stage in the departmental enquiry. However, if the Government servant makes a request for supply of copies of statements referred to at (3) of para 4.4 above before he files a written statement, the request, shall be acceded to.

[Para 8 of the OM No. 30/5/61-AVD dated 25.08.1961]

4.10 It is not ordinarily necessary to supply copies of the various documents and it would be sufficient if the Government servant is given such access as is permitted under the rules referred to above. Government servants involved in departmental proceedings when permitted to have access to official records sometimes seek permission to take photostat copies thereof. Such permission should not normally be acceded to especially if the officer proposes to make the photostat copies through a private photographer as thereby third parties would be allowed to have access to official records which is not desirable. If, however, the documents of which photostat copies are sought for are so vitally relevant to the case (e.g., where the proof of the change depends upon the proof of the hand-writing or a document the authenticity of which is disputed), the Government should itself make photostat copies and supply the same to the Government servant. In cases which are not of this or similar type (the example given above is only illustrative and not exhaustive), it would be sufficient if the Government servant is permitted to inspect the official records and take extracts

therefrom as is provided for in the provision of the Central Civil Services (Classification Control and Appeal) Rules.

[Para 9 of the OM No. 30/5/61-AVD dated 25.08.1961]

5. Defence Assistant-

5.1 Rule 14(8) of the CCS (CCA) Rules, 1965:

"(8) (a) The Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but 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;

Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing, so permits.

Note: The Government servant shall not take the assistance of any other Government servant who has three pending disciplinary cases on hand in which he has to give assistance.

(b) The Government servant may also take the assistance of a retired Government servant to present the case on his behalf, subject to such conditions as may be specified by the President from time to time by general or special order in this behalf."

[Rule 14(8) of the CCS (CCA) Rules, 1965]

5.2 When on behalf of the disciplinary authority, the case is being presented by a Prosecuting Officer of the Central Bureau of Investigation or a Government Law Officer (such as Legal Adviser, Junior Legal Adviser), there are evidently good and sufficient circumstances for the disciplinary authority to exercise his discretion in favour of the delinquent officer and allow him to be represented by a legal practioner. Any exercise of discretion to the contrary in such cases is likely to be held by the court as arbitrary and prejudicial to the defence of the delinquent Government servant.

[OM No. 11012/7/83-Estt.(A) dated 23.07.1984]

5.3 A Govt. servant should be allowed to make a representation to the Disciplinary Authority if the Inquiring Authority rejects a request for permission to take a Defence Assistant from a place other than the headquarters of the charged Govt. servant or the place of inquiry. Accordingly, in all cases where the inquiring authority rejects the request of the charged Govt. servant for engaging a defence assistant, from any station other than the headquarters of such Govt. servant or the place

where the inquiry is conducted, it should record its reasons in writing and communicate the same to the charged Govt. servant to enable him to make a representation against the order, if he so desires, to the disciplinary authority. On receipt of the representation from the charged Govt. servant, the Disciplinary Authority, after applying its mind to all the relevant facts and circumstances of the case, shall pass a well-reasoned order either upholding the orders passed by the inquiring authority or acceding to the request made by the charged employee. Since such an order of the disciplinary authority will be in the nature of a step-in–aid of the Inquiry, no appeal shall/lie against that order.

[Para 4 of the OM No. 11012/3/86-Estt.(A) dated 29.04.1986]

5.4 In terms of rule 14 (8) (b) of the CCS (CCA) Rules, 1965, the Government servant concerned may take the assistance of a retired Government servant subject to the following conditions :-

i) The retired Government servant concerned should have, retired from service under the Central Government.

ii) If the retired Government servant is also a legal practitioner, the restrictions on engaging a legal practitioner by a delinquent Government servant to present the case on his behalf, contained in Rule 14 (8) of the CCS (CCA) Rules, 1965 would apply.

iii) The retired Government servant concerned should not have, in any manner, been associated with the case at investigation stage or otherwise in his official capacity.

iv) The retired Government servant concerned should not act as a defence assistant in more than seven cases at a time. The retired Government servant should satisfy the inquiring officer that he does not have more than seven cases at hand including the case in question.

[OM No. 11012/11/2002-Estt.(A) dated 05.02.2003]

5.5 The government servant (defence assistant) who has been permitted to assist the accused official should be permitted to examine, cross examine and re-examine witnesses and make submission before the Inquiry Officer on behalf of the accused official, if the accused official makes a request in writing in this behalf.

[Para 1(4) of the OM No. 6/26/60-Ests.(A) dated 08.06.1962]

6. Written brief by the Presenting Officer:

6.1 Rule 14(19) of the CCS (CCA) Rules, 1965:

"(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed, and the Government servant, or permit them to file written briefs of their respective case, if they so desire."

[Rule 14(19) of the CCS (CCA) Rules, 1965]

6.2 It will be seen from the phraseology of rule 14(19) that the inquiring authority has to hear arguments that may be advanced by the parties after their evidence has been closed. But he can, on his own or on the desire of the parties, take written briefs. In case he exercises the discretion of taking written briefs, it will be but fair that he should first take the brief from the Presenting Officer, supply a copy of the same to the Govt. servant. In case the copy of the brief of the Presenting Officer is not given to the Govt. servant, it will be like hearing arguments of the Presenting Officer at the back of the Govt. servant. In this connection, attention is also invited to the judgement of the Calcutta High Court in the case of Collector of Customs Vs. Mohd. Habibul [SLR 1973)(1) Calcutta, 321] in which it is laid down that the requirement of rule 14(19) of the CCS(CCA) Rules, 1965 and the principles of natural justice demand that the delinquent officer should be served with a copy of the written brief filed by the Presenting Officer before he is called upon to file his written brief.

[Para 2 of the OM No 11012/18/77-Estt(A) dated 02.09.1978]

7. General Examination

7.1 Rule 14(18) of the CCS (CCA) Rules, 1965:

"(18) The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him."

[Rule 14(18) of the CCS (CCA) Rules, 1965]

7.2 Rule 14(18) of CCS (CCA) Rules, 1965, provides that, "the inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him". This is a formal action required to be taken by the inquiry officer before closing the inquiry. It has been seen that many a times this is not formally recorded and the inquiry gets vitiated. It is imperative that the inquiry is conducted strictly in accordance with the procedures prescribed.

[Para 3 of the OM No. 11012/3/2015-Estt.A-III dated 18.02.2015]

8. Ex-parte proceedings

8.1 Rule 14(20) of the CCS (CCA) Rules, 1965:

"(20) If the Government servant to whom a copy of the articles of charge 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 inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex parte."

[Rule 14(20) of the CCS (CCA) Rules, 1965]

8.2 In the case of Ghanshyam Das Srivastava Vs. State of Madhya Pradesh (AIR 1973 SC 1183), the Supreme Court had observed that where a Government servant under suspension pleaded his inability to attend the enquiry on account of financial stringency caused by the non-payment of subsistence allowance to him, the proceedings conducted against him exparte would be in violation of the provision of Article 311(2) of the Constitution as the person concerned did not receive a reasonable opportunity of defending himself in the disciplinary proceedings.

[Para 1 of the OM No. 11012/10/76-Estt.(A) dated 06.10.1976]

8.3 The judgment of the Supreme Court referred to in para 8.2 above indicates that in that case, the disciplinary authority proceeded with the enquiry exparte notwithstanding the fact that the Government servant concerned had specifically pleaded his inability to attend the enquiry on account of financial difficulties caused by non-payment of subsistence allowance. The Court had held that holding the enquiry exparte under such circumstances would be violative of Article 311(2) of the Constitution on account of denial of reasonable opportunity of defence. This point may also be kept in view by all authorities concerned before involving the provisions of rule 14(20) of the CCS (CCA) Rules, 1965.

[Para 3 of the OM No. 11012/10/76-Estt.(A) dated 06.10.1976]

9. Personal hearing by the Appellate Authority

Rule 27 of the CCS(CCA) Rules, 1965 does not specifically provide for the grant of a personal hearing by the appellate authority to the Government servant before deciding the appeal preferred by him against a penalty imposed on him. The principle of right to personal hearing applicable to a judicial trial or proceeding even at the appellate stage is not applicable to departmental inquiries, in which a decision by the appellate authority can generally be taken on the basis of the records before it. However, a personal hearing of the appellant by the appellate authority at times will afford the former an opportunity to present his case more effectively and thereby facilitate the appellate authority in deciding the appeal quickly and in a just and equitable manner. As Rule 27 of the CCA Rules does not preclude the grant of personal hearing in suitable cases, it has been decided that where the appeal is against an order imposing a major penalty and the appellant makes a specific

request for a personal hearing, the appellate authority may after considering all relevant circumstances of the case, allow the appellant, at its discretion, the personal hearing.

[Para 2 of the OM No. 11012/20/85-Estt.(A) dated 28.10.1985]

10. Circumstances for holding detailed inquiry under Rule 16 (Minor penalty proceeding):

Rule 16(1-A) of the CCS(CCA) Rules, 1965 provides for the holding of an inquiry even when a minor penalty is to be imposed in the circumstances indicated therein. In other cases, where a minor penalty is to be imposed, Rule 16(1) ibid leaves it to the discretion of disciplinary authority to decide whether an inquiry should be held or not. The implication of this rule is that on receipt or representation of Government servant concerned on the imputations of misconduct or misbehaviour communicated to him, the disciplinary authority should apply its mind to all facts and circumstances and the reasons urged in the representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not. In a case where a delinquent Government servant has asked for inspection of certain documents and cross examination of the prosecution witnesses, the disciplinary authority should naturally apply its mind more closely to the request and should not reject the request solely on the ground that an inquiry is not mandatory. If the records indicate that, notwithstanding the points urged by the Government servant, the disciplinary authority could, after due consideration, come to the conclusion that an inquiry is not necessary, it should say so in writing indicating its reasons, instead of rejecting the request for holding inquiry summarily without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice.

[OM No. 11012/18/85-Estt.(A) dated 28.10.1985]

11. Need for issuing speaking orders by competent Authority in disciplinary cases:

11.1 As is well known and settled by courts, disciplinary proceedings against employees conducted under the provisions of CCS (CCA) Rules, 1965, or under their corresponding rules, are quasi-judicial in nature and as such, it is necessary that orders in such proceedings are issued only by the competent authorities who have been specified as disciplinary/appellate/reviewing authorities under the relevant rules and the orders issued by such authorities should have the attributes of a judicial order. The Supreme Court, in the case of Mahavir Prasad Vs State of U.P.(AIR 1970 SC 1302) observed that recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy, or reached on ground of policy or expediency. The necessity to record reasons is greater if the order is subject to appeal.

[Para 1 of the OM No. 134/1/81-AVD-I dated 13.07.1981]

11.2 Where the final orders passed by the competent disciplinary/appellate authorities do not contain the reasons on the basis whereof the decisions communicated by that order were reached, such orders may not conform to legal requirements, and therefore they may be liable to be held invalid, if challenged in a court of law. It is, therefore, impressed upon all concerned that the authorities exercising disciplinary powers should issue self-contained speaking and reasoned orders conforming to the aforesaid legal requirements.

[Para 2 of the OM No. 134/1/81-AVD-I dated 13.07.1981]

11.3 Instances have also come to notice where, though the decisions in disciplinary/appellate cases were taken by the competent disciplinary/appellate authorities in the files, the final orders were not issued by that authority but only by a lower authority. As mentioned above, the disciplinary/appellate/reviewing authorities exercise quasi-judicial powers and as such, they cannot delegate their powers to their subordinates. It is, therefore, essential that the decision taken by such authorities are communicated by the competent authority under their own signatures, and the order so issued should comply with the legal requirements as indicated in the preceding paragraphs. It is only in these cases where the President is the prescribed disciplinary/appellate/reviewing authority and where the Minister concerned has considered the case and given his orders that an order may be authenticated by an officer, who has been authorised to authenticate orders in the name of the President.

[Para 3 of the OM No. 134/1/81-AVD-I dated 13.07.1981]

12. Where disciplinary proceedings are initiated against a Government servant who is officiating in a higher post on an ad-hoc basis

The question whether a Government servant appointed to a higher post on ad hoc basis should be allowed to continue in the ad hoc appointment when a disciplinary proceeding is initiated against him has been considered by this Department and it has been decided that the procedure outlined below shall be followed in such cases:-

(i) Where an appointment has been made purely on ad hoc basis against a short- term, vacancy or a leave vacancy or if the Government servant appointed to officiate until further orders in any other circumstances has held the appointment for a period less than one year, the Government servant shall be reverted to the post held by him substantively or on a regular basis, when a disciplinary proceeding is initiated against him.

(ii) Where the appointment was required to be made on ad hoc basis purely for administrative reasons (other than against a short term vacancy or a leave vacancy) and the Government servant has held the appointment for more than one year, if any disciplinary proceeding is initiated against the Government servant, he need not be reverted to the post held by him only on the ground that disciplinary proceeding has been initiated against him.

Appropriate action in such cases will be taken depending on the outcome of the disciplinary case.

[OM No. 11012/9/86-Estt.(A) dated 24.12.1986]

13 Disciplinary action for acts done by the Government servants in their previous or earlier employment:

An employee is not precluded from taking action against an employee in respect of misconduct committed before his employment if the misconduct was of such a nature as has rational connection with his present employment and renders him unfit and unsuitable for continuing in service. A provision in the Discipline Rules that penalties can be imposed for 'good and sufficient reasons', as in rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, would be adequate authority for taking action in respect of misconduct of the nature referred to above. When such action is taken, the charge should specifically state that it renders him unfit and unsuitable for continuance in service.

[OM No. 39/1/67-Ests(A) dated 21.02.1967]

14. Consideration of past bad record for the purpose of imposition of penalty in disciplinary proceedings:

14.1 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.

[Para 1 of the OM No. 134/20/68-AVD dated 28.08.1968]

14.2 In this connection attention is invited to the following extract from the judgement of the Supreme Court in the State of Mysore Vs. K. Monche 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 he 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 country, 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*."

[Para 2 of the OM No. 134/20/68-AVD dated 28.08.1968]

14.3 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 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. cannot 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.

[Para 3 of the OM No. 134/20/68-AVD dated 28.08.1968]

15. Action against Government servants to be taken if they are later found ineligible or unqualified for their initial recruitment

15.1 A question has arisen as to whether a Government servant can be discharged from service where it is discovered later that the Government servant was not qualified or eligible for his initial recruitment in service. The Supreme Court in its judgement in the District Collector, Vizianagram vs. M. Tripura Sundari Devi (1990 (4) SLR 237 went into this issue and observed as under:-

> "*It must further be realized by all concerned that when an advertisement mentions a particular qualification and an appointment is made in between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint a person with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No Court should be a party to the perpetuation of the fraudulent practice.*"

It has been decided that wherever it is found that a Government servants who was not qualified or eligible in terms of the recruitment rules etc, for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in service. If he is a probationer or a temporary Govt. servant, he should be discharged or his services should be terminated. If he has become a permanent Govt. servant, an inquiry as

prescribed in Rule 14 of CCS(CCA) Rules, 1965 may be hold and if he charges are proved, the Government servant should be removed or dismissed from service. In no circumstances should any other penalty be imposed.

[Para 2 of the OM No. 11012/7/91-Estt.(A) dated 19.05.1993]

15.2 Such discharge, termination, removal or dismissal from service would, however, be without prejudice to the right of the Government to prosecute such Government servants.

[Para 3 of the OM No. 11012/7/91-Estt.(A) dated 19.05.1993]

16. Disciplinary action against the office bearers of the Staff Association/ Union etc.

16.1 Rule 24(3) of the CCS (CCA) Rules, 1965:

> *(3) A Government servant may prefer an appeal against an order imposing any of the penalties specified in rule 11 to the President, where no such appeal lies to him under sub-rule (1) or sub-rule (2), if such penalty is imposed by any authority other than the President, on such Government servant in respect of his activities connected with his work as an office-bearer of an association, federation or union, participating in the Joint Consultation and Compulsory Arbitration Scheme.*
>
> [Rule 24(3) of the CCS (CCA) Rules, 1965]

16.2 Rule 24(3) of the CCS (CCA) Rules, 1965 provides that an appeal against an order imposing any of the penalties specified in rule 11 of the said Rules lies to the President, where no such appeal lies to him under sub-rule (1) and (2) of rule 24, if such penalty is imposed by any authority other than the President, on such Government servant in respect of his activities connected with his work as an office-bearer of an association or union participating in the Joint Consultation and Compulsory Arbitration Scheme. It is clarified that all appeal to the President under this provision should be placed before the Minister-in-charge for final orders, irrespective of whether the general directions in various Ministries, relating to the disposal of appeal addressed to the President require such submission or not.

[OM No. 7/4/64-Ests.(A) dated 18.04.1967]

16.3 The Government servants who are office bearers of the Staff Associations are subject to the provisions of Conduct and Disciplinary Rules like all other Government servants. However, if a Government feels that he is being penalized for any act done by him which is directly or indirectly connected with his position as an office bearer of an association, he can prefer an appeal against such action directly to the President in terms of Rule24(3) of the CCS(CCA) Rules, 1965 bringing forth the reasons which may establish the nexus between the disciplinary action taken against him and his activities as office bearer of an association. If the contention of an officer bearer of an association that his case is covered under the provisions of Rule 24(3) ibid is not accepted and his appeal is decided by some lower appellate authority concerned to seek revision of his case by the President in terms of Rule 29 ibid.

[OM No. 35014/2/89-Ests.(A) dated 10.10.1990]

17 President's power of review under Rule 29 of the CCS (CCA) Rules, 1965

17.1 This Department, vide Notification No. 11012/1/80-Ests(A) dated the 6th August, 1981 amended Rule 29 of the CCS (CCA) Rules, 1965 and introduced Rule 29-A therein. The amendment was necessitated by the judgement of the Delhi High Court in the case of Shri R.K. Gupta Vs. Union of India and another (Civil Writ Petition No.196 of 1978 and 322 of 1979) in which the High Court held that under Rule 29 of the CCS (CCA) Rules, 1965-

(i) The President has power to review any order under the CCS (CCA) Rules, 1965 including an order of exoneration, and

(ii) The aforesaid power of review is in the nature of revisionary power and not in the nature of reviewing one's own order.

17.2 The matter was examined in consultation with the Ministry of Law who had observed that the judgement of the Delhi High Court would indicate that the President cannot exercise his revisionary powers in a case in which the power had already been exercised after full consideration of the facts and circumstances of the case. There is, however, no objection to providing for a review by the President of an order passed by him earlier in revision if some new fact or material having the nature of changing the entire complexion of the case comes to his notice later. Accordingly, Rule 29 of the CCS (CCA) Rules, 1965 has been amended to make it clear that the power available under that rule is the power of revision and a new rule, Rule 29-A, has been introduced specifying the powers of the President to make a review of any order passed earlier, including an order passed in revision under Rule 29, when any new fact or material which has the effect of changing the nature of the case comes to his notice. It may also be noted while the President and other authorities enumerated in Rule 29 of the CCS (CCA) Rules, 1965, exercise the power of revision under that rule, the power of review, under Rule 29-A is vested in the President only and not in any other authority. With the amendment of Rule 29 and the introduction of Rule 29-A, the heading of Part VIII of the CCS(CCA) Rules, 1965 has also been appropriately changed as "Revision and Review".

[OM No. 11012/1/80-Ests(A) dated 03.09.1981]

18. Imposition of penalty by lower disciplinary authority if the proceeding was initiated by a higher disciplinary authority:

When proceedings are instituted by a "higher disciplinary authority", final orders should also be passed by such "higher disciplinary authority" and the case should not be remitted to lower disciplinary authority on the ground that on merit of the case it is sufficient to impose a minor penalty and such minor penalty could be imposed by a lower disciplinary authority. In such cases the appeal against the punishment order of the "higher disciplinary authority" shall lie to the authority prescribed under the CCS (CCA) Rules as the appellate authority in respect of such order.

[Para 1(3) of the OM No. 6/26/60-Ests.(A) dated 08.06.1962]

19. Closing of disciplinary cases in the event of death of charged official

Where a Government servant dies during the pendency of the inquiry i.e. without charges being proved against him, imposition of any of the penalties prescribed under the CCS(CCA) Rules, 1965, would not be justifiable. Therefore, disciplinary proceedings should be closed immediately on the death of the alleged Government servant.

[OM No. 11012/7/99-Estt.(A) dated 20.10.1999]

20. ISTM publication - Handbook for Inquiry Officer & Disciplinary Authorities:

20.1 Hon'ble High Court of Delhi in WP (C) No. 3510/2013 in the matter of Shri K.K.S. Sirohi & Ors V/s UoI observed that:

> *"19. Copy of this order be sent to Secretary DOPT who is requested to ensure that such Government officials who are appointed as Inquiry Officers be made aware of the procedures of law to be followed so that in future the painful situation as we find in the instant case does not re-occur."*

The said judgement is available on the website of Delhi High Court.

20.2 The above directions may kindly be brought to the notice of all Inquiry Officers presently engaged by the Ministry/Department so that the procedure of law are duly followed, both in letter and spirit. In this regard, attention is also invited to the recently released ISTM publication-'Handbook for Inquiry Officers & Disciplinary Authorities' which can be used as a reference guide in such matters. The Handbook may be accessed under on this Department's website: https://dopt.gov.in/reports/hand-book/hand-book-inquiry-officers-and-disciplinary-authorities-2013.

[OM No. 11012/16/2013-Estt.A dated 15.01.2014]

21. Sharing of advice of UPSC with the Charged Officer:

21.1 Hon'ble Supreme Court in its judgment, on 16.03.2011, while dismissing the Civil Appeal No. 5341 of 2006 in the matter of Union of India & Ors. vs S. K. Kapoor, held that it is a settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge sheeted employee so that he may have a chance to rebut the same. In compliance of the judgement of Hon'ble Supreme Court in S.K. Kapoor case, provisions regarding supplying a copy of the advice of UPSC, in all cases where the Commission is consulted, to the Charged Officer were incorporated by amending the CCS (CCA) Rules, 1965 vide G.S.R. No. 769(E) dated 31.10.2014.

21.2 In brief, in the disciplinary cases, where the UPSC are to be consulted, the following procedure should be adopted:

(a) The Disciplinary Authority shall forward or cause to be forwarded to UPSC for its advice:

(i) a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge; and
(ii) comments on the representation of the Government servant on the Inquiry report and disagreement note, if any, with all the case records of the inquiry proceedings.

(b) On receipt of the UPSC advice, the Disciplinary Authority shall forward or cause to be forwarded a copy of the advice to the Government servant who shall be required to submit, if he so desires, his written representation/submission to the Disciplinary Authority within fifteen days. The Disciplinary Authority shall consider such representation and take action as prescribed in sub-rule (4), (5) and (6) of the Rule 15 of the CCS (CCA) Rules, 1965.

[Para 4 of the OM No. 11012/8/2011-Estt.(A) dated 19.11.2014]

21.3 Similarly, in matters relating to Appeal/ Revision/ Review, a copy of the UPSC advice, if consulted, may be supplied to the Government servant and his representation, if any, thereon may be considered by the Appellate/ Revisionary/ Reviewing Authority before passing final order.

[Para 5 of the OM No. 11012/8/2011-Estt.(A) dated 19.11.2014]

21.4 Cases decided before the date of this judgement, i.e., 16th March, 2011 need not be reopened. In cases decided after 16th March, 2011, where a penalty was imposed after relying upon the advice of UPSC, but where a copy of such advice was not given to the Charged Officer before the decision, the penalty may be set aside and inquiry taken up from the stage of supply of copy of the advice of UPSC.

[Para 3 of the OM No. 11012/05/2015-Estt.(A-III) dated 14.07.2016]

21.5 In cases where a penalty of dismissal, removal or compulsory retirement has been imposed, the Charged Officer, if he has not reached the age of superannuation, shall be deemed to be under

suspension from the date of original penalty as per rule 10(4) of the CCS (CCA) Rules, 1965.

[Para 4 of the OM No. 11012/05/2015-Estt.(A-III) dated 14.07.2016]

21.6 Cases where the Government servant has retired shall be dealt with as per rule 69 of CCS (Pension) Rules, 1972 (*now Rule 8 of the CCS (Pension) Rules, 2021*). In the cases of any other penalties, only the penalty will be set aside, but no consequential benefits like arrears of pay shall be allowed. This will be decided by the Competent Authority after conclusion of the further inquiry. Similarly, in a case where a penalty of recovery has been imposed, if the recovery is being made in installments, the recovery shall be suspended pending finalization of further inquiry. No refund of recovery already effected will be made. Whether the money already recovered has been refunded will depend on the decision of the Disciplinary Authority. Where a penalty of withholding of increments has been imposed, if a withheld increment has become due, the same may be released. There is no question of release of any arrears till finalization of the proceedings.

[Para 5 of the OM No. 11012/05/2015-Estt.(A-III) dated 14.07.2016]

22. Signing of Charge Sheet/ Penalty order

22.1 Instances have also come to notice where, though the decisions in disciplinary/appellate cases were taken by the competent disciplinary/appellate authorities in the files, the final orders were not issued by that authority but only by a lower authority. As mentioned above, the disciplinary/appellate/reviewing authorities exercise quasi-judicial powers and as such, they cannot delegate their powers to their subordinates. It is, therefore, essential that the decision taken by such authorities are communicated by the competent authority under their own signatures, and the order so issued should comply with the legal requirements as indicated in the preceding paragraphs. It is only in these cases where the President is the prescribed disciplinary/appellate/reviewing authority and where the Minister concerned has considered the case and given his orders that an order may be authenticated by an officer, who has been authorised to authenticate orders in the name of the President.

[Para 3 of the OM No. 134/1/81-AVD-I dated 13.07.1981]

22.2 Signature on the charge sheet:

a) If the President is the DA – An officer authorized under Article 77(2) of the Constitution to authenticate the order on behalf of President.

b) In cases where the DA other than the President – DA itself to sign the charge sheet.

[OM No 43020/14/2021-Estt.A-III dated 08.11.2021]

23 Time line for conducting disciplinary inquires

23.1 Crucial Time Limits at various stages of Inquiry

S. No.	What is the time limit for charged officer to submit his written statement of defence on charge sheet?	It is 15 days, which can be further extended by a period not exceeding 15 days at a time for reasons to be recorded in writing by the Disciplinary Authority or any other authority authorized by the Disciplinary Authority on his behalf. The overall limit for filing of reply should not be extended beyond 45 days from the receipt of the articles of charge by the charged officer. [Sub Rule 4 in Rule 14 of CCS (CCA) Rules, 1965]
1.	What is the time limit for producing requisite documents claimed by charged officer during?	Sub rule (13) in Rule 14 provides for producing the documents or issue of non-availability certificate within a period of one month of the receipt of such requisition.
2.	What is the time period for the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge if the Government Servant fails to appear within the specified time or refuses or omits to plead?	It is 30 days. [Sub rule (11) in Rule 14 of CCS (CCA) Rules, 1965]
3.	What is the time period for inspecting the documents produced by Presenting Officer for the purpose of preparing his defence?	Within five days of the order passed by Inquiring Authority, which can be further extended not exceeding 5 days. [Sub rule (11) (i) in Rule 14 of CCS (CCA) Rules, 1965]
4.	What is the notice period for production of any documents, which are in possession of Government but not mentioned in the list of documents served with the charge sheet but a request in this regard is made by the Charged Officer?	The Inquiring Authority can allow a time of 10 days for the purpose, which can further be extended by not exceeding 10 days. [Sub rule (11) (iii) in Rule 14 of CCS (CCA) Rules, 1965]

5.	What is the time limit provided for adjournment before close of the case for Presenting Officer to produce evidences not included in the list given to Charged officer or Inquiring Authority himself call for new evidence or recall and reexamine any witness?	Such adjournment is done for 3 clear days excluding the day of adjournment and the day to which the inquiry is adjourned. [Sub rule 15 in Rule 14 of CCS (CCA) Rules, 1965]
6.	What is the time limit for completing the inquiry and submit report by Inquiring Authority?	In terms of notification No G.S.R. 548 (E) dated 02.06.2017, the Inquiring Authority should conclude the inquiry and submit his report within 6 months from the date of receipt of order of his appointment. An additional time not exceeding six months for completing the inquiry can be allowed at a time on the basis of sufficient and good reasons, to be recorded in writing by Disciplinary Authority. [Sub rule (24) in Rule 14 of CCS (CCA) Rules, 1965]
7.	Whether time limit of 6 months decided vide notification dated 02.06.2017 is also applicable to cases where Inquiring Authority was appointed prior to the 02.06.2017?	Yes. Ideally such cases should have been completed, as per the time limit prescribed in the said notification, if those cases are still pending, the period of six months for completing the inquiry can be reckoned w.e.f. 02.06.2017 and extension should be sought, if required.
8.	What is the time limit for furnishing written representation by charged officer on the advice of UPSC?	It is 15 days from the receipt of the copy of advice of UPSC by the charged officer. [Sub rule (3)(b) in Rule 15 of CCS (CCA) Rules, 1965]
9.	What is the time limit for sending proposal to CVC for first stage advice?	If vigilance angle is involved in any complaint, this case should be referred to CVC for their 1st stage advice within one month of the receipt of investigation report. If vigilance angle is not involved, the case should be put up to disciplinary authority for taking a decision to initiate disciplinary action under CCS (CCA) Rules within one month from the date of receipt of investigation report. [DoP&T's O.M. No. 425/04/2012-AVD-IV(A) dated 29.11.2012]

10.	What is the time limit to put up the case to Disciplinary Authority after receipt of first stage advice of CVC for taking a decision to initiate disciplinary proceeding?	Within one month of the receipt of first stage advice of CVC. [DoP&T's O.M. No. 425/04/2012-AVD-IV(A) dated 29.11.2012]
11.	What is the time limit to issue a charge sheet to Charged Officer once a decision is taken by Disciplinary Authority to initiate disciplinary proceeding?	The charge sheet should be issued to Charged Officer within a week from the date of receipt of the decision of Disciplinary Authority. [DoP&T's O.M. No. 425/04/2012-AVD-IV(A) dated 29.11.2012]
12.	What is the time limit for seeking representation of Charged Officer on inquiry report and disagreement of Disciplinary Authority, if any on it?	The Charged Officer may be allowed 15 days to submit, if he so desires, his written representation or submission to the Disciplinary authority. [DoP&T's O.M. No. 11012/13/85-Estt.(A) dated 29.06.1989]
13.	What is the time limit for seeking second stage advice of CVC, if required or to UPSC for their advice?	It should be sent to CVC or UPSC within one month from the date of receipt of representation of Charged Officer on Inquiry Report. (CVC's circular No. 000/VGL/18 dated 23.05.2000)
14.	What is the time limit for concluding major penalty proceeding?	It should be completed within 18 months from the date of issue of the charge sheet to Charged Officer. [DoP&T's O.M. No. 372/3/2007-AVD-III (Vol.10) dated 14.10.2013]

[OM .No. 11012/09/2016-Estt A-III dated 08.12.2017]

23.2 Both in the public interest as well as in the interest of employees no avoidable delay should occur in the disposal of disciplinary cases, it is necessary that sufficient time is available to the disciplinary authority to apply its mind to all relevant facts which are brought out in the inquiry before forming an opinion about the imposition of a penalty, if any, on the Government servant. while therefore it has to be ensured that fixing of any time-limit on the disposal of the inquiry report by the disciplinary authority by making a provision in this regard in the C.C.S (C.C.A.) Rules should not lead to any perfunctory disposal of such cases, taking all relevant factors into consideration it is felt that in cases which do not require consultation with the C.V.C. or the U.P.S.C., it should normally be possible for the disciplinary authority to take a final decision on the inquiry report within a period of three months at the most. In cases where the disciplinary authority feels that it is not possible to adhere to this time-limit, a report may be submitted by him to the next higher authority indicating the additional period within which the case is likely to be disposed of and the reasons for the same. In cases requiring consultation with the C.V.C. and the U.P.S.C also, every effort should be made to ensure that such cases are disposed of as quickly as possible.

[OM No. 39/43/70-Ests(A) dated 08.01.1971]

23.3 Though no specific time limit has been prescribed in the above OM No. 39/43/70-Ests(A) dated 08.01.1971 in respect of cases where consultation with CVC and UPSC is required. It is imperative that the time limit of three months prescribed for other cases should be adhered to in such cases after receipt of the advice of the UPSC. All Ministries/Departments are, therefore, requested to dispose of disciplinary cases as quickly as possible within the time limit indicated above.

[OM No. 11012/21/98-Estt.(A) dated 11.11.1998]

23.4 Time-limit for the disposal of appeals:

(i) The appellate authorities are expected to give a high priority to the disposal of appeals, there might be cases in which the hands of the appellate authority are too full and it may not be able to devote the time and attention required for the disposal of appeals within a short period. In such case the appellate authority can be relieved of his normal work to such an extent as would be necessary to enable him to devote the required time and attention to the disposal of the appeals pending before him by redistribution of that work amongst other officers. If, however, the number of appeals received or pending with any particular appellate authority is very large, the appellate work itself could be re-distributed as far as possible among a number of officers of equivalent rank and in any case not below the rank of the appellate authority through a general order issued in exercise of the powers under rule 24 of the CCS (CCA) Rule, 1965.

(ii) As regards prescribing procedure for review of the position regarding pending appeals, it has been decided that, apart from the provisions laid down in the Manual of office procedure whereby cases pending disposal for over a month are reviewed by the appropriate higher authorities, a separate detailed statement of appeals pending disposal for over a month should be submitted by the appellate authority to the next higher authority indicting particularly the reasons on account of which the appeals could not be disposed of within a month and the further time likely to be taken for disposal of each such appeal, along with the reasons therefor. This would enable the appropriate higher

authority to go into the reasons for the delay in the disposal of appeals pending for more than a month, and take remedial steps wherever necessary to have the pending appeals disposed of without further delay. In cases where the appellate authority is the President under rule 24 of the C.C.S. (C.C.A.) Rules, 1965, the aforesaid statement should be submitted to the Secretary of the Ministry/Department concerned for similar scrutiny.

[OM No. 39/42/70-Ests.(A) dated 15.05.1971]

23.5 Flow chart prescribing the steps involved in the disciplinary cases for better understanding of Rules in their application by the DAs is at **Annexure**.

[OM No. 43020/14/2021-Estt.A-III dated 08.11.2021]

24 In case any reference to the relevant OM is required, the same may be accessed by clicking on the hyperlink of the OMs. List of the OMs mentioned in this document are as under:

S. No.	OM NO.	Date	Subject
1.	No. 39/40/52-Ests.	04.10.1952	Departmental Proceedings against Government Servants - Steps for expeditious and better disposal of - nomination of specified officers in the Ministries/Deptts. to be in charge of all disciplinary inquiries in the Ministry/Department.
2.	No. 6/26/60-Ests (A)	16.02.1961	Recommendations of the Pay Commission regarding disciplinary proceedings - Decisions on the
3.	No. 30/5/61-AVD	25.08.1961	Supply of copies of documents to the delinquent official.
4.	No. 6/26/60-Ests. (A)	08.06.1962	CCS(CCA) Rules, 1967 - Rule 15 - Clarification regarding submission of written statement of defence, approval of the assisting employee by the disciplinary authority, scope of functions of the assisting employees; and the authority competent to impose minor penalties.
5.	No. 39/1/67-Ests(A)	21.02.1967	Recommendation of the Joint Conference of Central Bureau of Investigation and State Anti-Corruption Officers for making a provision in the rules of public sector

			undertakings to take disciplinary action for acts done by their employees in their previous or earlier employment.
6.	No. 7/4/64-Ests. (A)	18.04.1967	Central Civil Services (Classification, Control and Appeal) Rules, 1965-Appeal in the case of a disciplinary order against an officer bearer of an association or union in respect of activities as such office bearer-Disposal of.
7.	No. 39/2/68-Ests (A)	14.05.1968	Review of disciplinary proceedings against Government servants - Procedure to be followed while proposing enhancement of the penalty already imposed on a Government servant.
8.	No. 134/20/68-AVD	28.08.1968	Disciplinary proceedings- Consideration of past bad record for purpose of imposition of penalty.
9.	No. 7/11/70-Esst(A)	24.09.1970	Central Civil Services (Classification, Control and Appeal) Rules, 1965, - Provision for re-cross-examination in the disciplinary proceedings.
10.	No. 7/1/70-Est(A)	06.01.1971	Departmental proceedings against Government servants – steps for expeditious and better disposal of nomination of Specified officers in the Ministries/Departments to be in charge of all disciplinary inquiries in the Ministry/Department.
11.	No. 39/43/70-Ests (A)	08.01.1971	Elimination of delays in the disposal of disciplinary cases - time - limit for passing final orders on the inquiry report.
12.	No. 39/42/70-Ests (A)	15.05.1971	Rule 27 of the C.C.S. (C.C.A) Rules, 1965 - question of fixing a time-limit for the disposal of appeals.
13.	No. 39/40/70-Ests (A)	09.11.1972	Departmental Inquiries against Government servants - appointment of Inquiring Authority.
14.	No. 39/32/72-Ests(A)	13.12.1972	Disciplinary proceedings - appointment of Inquiry Officers.
15.	No. 134/7/75-AVD.I	01.06.1976	Admissibility during oral inquiry, of statements made by the delinquent officers and the witnesses at the stage of preliminary inquiry/investigation.
16.	No. 35014/1/76-Estt (A)	29.07.1976	Inquiry by the disciplinary authority - Item raised in the meeting of the National Council (JCM) held in Nov., 1975.

17.	11012/10/76-Estt. (A)	06.10.1976	CCS (CCA) Rules, 1965 - Recourse to ex-parte proceedings under Rule 14(20) - clarification regarding.
18.	No. 11012/18/77-Estt-A	02.09.1978	CCS (CCA) Rules 1965 – procedure to be followed under rule 14(19) thereof.
19.	No. 134/1/81-AVD-I	13.07.1981	Disciplinary cases need for issuing speaking orders by competent authorities.
20.	11012/1/80-Ests(A)	03.09.1981	Rule 29 of the CCS(CCA) Rules, 1965-President's power of review under Rule 29-Judgement of Delhi High Court in the case of Shri R.K. Gupta, Development Officer, D. G.T.D.
21.	11012/7/83-Estt. (A)	23.07.1984	CCS (CCA) Rules, 1965 – Rule 14(8)(a) – Request of a delinquent official for permission to engage a Legal Practitioner to defend his case before the Inquiry Officer.
22.	No. 11012/18/85-Estt (A)	28.10.1985	Rule 16(1) Holding of inquiry in specific circumstances-Recommendations of Committee of National Council (JCM)
23.	No. 11012/20/85-Estt (A)	28.10.1985	Rule 27 (2) of CCS(CCA) Rules,1965 – Personal hearing in case of major penalties – Recommendations of the National Council (JCM)
24.	11012/3/86-Estt. (A)	29.04.1986	Removal of restriction on engaging Defence Assistant – Rule 14(8) of CCS(CCA) Rules, 1965 – recommendation of National Council (JCM)
25.	No. 11012/9/86-Estt.(A)	24.12.1986	Procedure to be followed in cases where disciplinary proceedings are initiated against a Government servant who is officiating in a higher post on an ad-hoc basis.
26.	No.35014/2/89-Ests.(A)	10.10.1990	Disciplinary action against the office bearers of the Staff Associations/Unions etc.
27.	No. 11012/7/91-Estt. (A)	19.05.1993	Action against Government servants to be taken if they are later found ineligible or unqualified for their initial recruitment.
28.	No. 11012/21/98-Estt. (A)	11.11.1998	Delays in passing orders by the Disciplinary Authorities.

29.	No. 11012/7/99-Estt (A)	20.10.1999	CCS(CCA) Rules, 1965 - Procedure regarding closing of disciplinary cases in the event of death of the charged official.
30.	No. 11012/11/2002-Estt. (A)	05.02.2003	CCS (CCA) Rules, 1965 - retired Government servants appearing as Defence Assistants - conditions reg.
31.	No. 11012/16/2013-Estt.A	15.01.2014	Directions of Hon'ble High Court, New Delhi in WP (C) No.3510/2013 in the matter of Sh. K.K.S, Sirohi and Ors. vs. UOI- regarding..
32.	No. 11012/3/2015-Estt-A-III	18.02.2015	Importance of following the due process in disciplinary proceedings-regarding.
33.	No. 11012/09/2016-Estt.A-III	08.12.2017	Frequently Asked Questions on timeline for completing Disciplinary proceeding in time bound manner under CCS (CCA) Rules, 1965.
34.	F. No. 43020/14/2021-Estt. A-III	08.11.2021	Aid to processing of departmental proceedings under the CCS (CCA) Rules, 1965 - Simplification regarding.

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(II) CLARIFICATION/ INTERPRETATION OF PENALTIES UNDER CCS (CCA) RULES, 1965

The following penalties are prescribed in the Rule 11 of the CCS (CCA) Rules, 1965.

"*The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:-*

Minor Penalties –

(i) censure;

(ii) withholding of his promotion;

(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;

(iii a) reduction to a lower stage in the time-scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.

(iv) withholding of increments of pay;

Major Penalties –

(v) save as provided for in clause (iii) (a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(vi) reduction to lower time-scale of pay, grade, post or Service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time-scale of pay, grade, post or Service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period –

(a) the period of reduction to time-scale of pay, grade, post or service shall operate to postpone future increments of his pay, and if so, to what extent; and
(b) the Government servant shall regain his original seniority in the higher time scale of pay, grade, post or service;

(vii) compulsory retirement;

(viii) removal from service which shall not be a disqualification for future employment under the Government;

(ix) *dismissal from service which shall ordinarily be a disqualification for future employment under the Government*."

[Rule 11 of the CCS(CCA) Rules, 1965]

2. Apart from the above rule, Department of Personnel and Training has issued various executive instructions clarifying/ interpreting the implication of above penalties. The essence of these instructions has been summarized in the subsequent paras for guidance and better understanding: -

3. Regulation of pay on imposition of penalty

3.1 In the light of Implementation of the Revised (Pay) Rules, 2016, the regulation of pay on imposition of these penalties, is as under:

(A) Reduction to a lower stage of pay by one stage {Rule 11(iii a)}

On imposition of a penalty under this Rule, the pay would be fixed at the next upper vertical cell in the same level in the pay matrix. In other words, in case of reduction by one stage, the revised pay would be the pay drawn in the same level at the stage before the last increment.

Note: The above mentioned penalty cannot be imposed on a Government Servant drawing pay at the minimum of the Level.

(B) Withholding of increment {Rule 11(iv)}

Increment is granted either on 1st January or 1st July of every year, as per the eligibility. Therefore, on imposition of penalty of withholding of increment, the next increment(s) due after the date of imposition of the penalty would be withheld. In case where penalty of withholding of multiple increments is imposed, increments due on 1st January or 1st July, as the case may be, in the subsequent years would similarly be withheld. The increment would be restored at the end of the period for which the penalty is imposed. The increments will be given on notional basis without arrears and without affecting date of next increment on restoration of increment.

This also applies to cases where the penalty is imposed for part of a year. For instance, if the penalty of withholding of one increment for six months is imposed on a Government servant in October 2017, then withholding of increment will be on following manner:

When the date of increment is 1st January	When the date of increment is on 1st July
The increment falling due on 1.01.2018 will be withheld for a period of next six months, that is, till 30.06.2018. The increment would be released on 1.07.2018 without arrear.	The increment falling due on 1.07.2018 will be withheld for a period of next six months, that is, till 31.12.2018. The increment would be released on 01.01.2018 without arrears.

(C) Reduction to a lower stage in the time-scale of pay for a specified period [Rule 11(v)]

The process of imposition of penalty of reduction by one stage under Rule 11(iii a) explained above shall be repeated for every additional stage of reduction to the lower vertical cell in the same level of pay in the Pay Matrix.

Note 1: It is not permissible to impose a penalty under this rule if the pay after imposition of the penalty would fall below the first cell of the same Level.

Note 2: Disciplinary Authority may weigh all factors before deciding upon the quantum of penalty i.e. the number of stage by which the pay is to be reduced.

(D) Reduction to lower time-scale of pay under Rule 11(vi)

In the case of imposition of penalty of reduction to lower time-scale of pay, the pay of the Government servant would be reduced to the stage of pay he/she would have drawn had he/she continued in the lower post for the period of penalty. The mode of fixation of pay in this case is similar to reversing the mode of fixation of pay on promotion.

However, Disciplinary Authority has the power, in terms of FR 28, to indicate the pay which the Government servant on whom a penalty of reduction in rank has been imposed, would draw.

It may also be noted that a Government servant cannot be reduced in rank to a post not held earlier by him in the cadre.

For example:

(i) A direct recruit Assistant Section Officer cannot be reduced to the lower rank like SSA/JSA.

(ii) A Government servant holding any post like LDC/ Tax Assistant etc. who qualifies as Assistant Section Officer as a Direct Recruit and is later promoted as Section Officer cannot be reduced to the rank, which was earlier held by him before ASO (DR) but only to that of an Assistant Section Officer.

[Para 4 of the OM No. 11012/15/2016-Estt.A-III dated 18.06.2019]

3.2 Hon'ble Supreme Court in cases of Shri Nayadar Singh & Shri M. J. Ninama V/s Union of India (Civil Appeal No. 3003 of 1988 and 889 of 1988) discussed the scope of penalty under clause (vi) under Rule 11 of the CCS (CCA) Rules, 1965. This judgement related to two cases in one of which a Government servant who was initially recruited as a Postal Assistant and was later promoted as UDC, while working as UDC, was reduced in rank, as a measure of penalty, to a post of LDC, which was lower in rank than the post of Postal Assistant to which he had been recruited initially. In the second case, the disciplinary authority had imposed a penalty of reduction in rank reducing an officer to which he was recruited directly to that of Junior Technical Assistant. The Supreme Court, while setting aside the penalty imposed in both cases have held that a person appointed directly to a higher post, service, grade or time-scale of pay cannot be reduced by way of punishment to a post in a lower time-scale, grade, service or to a post which he never held before.

[OM No. 11012/2/88-Estt.(A) dated 02.02.1989]

3.3 The minor penalties and major penalties in rule 11 of the CCS (CCA) Rules, 1965 have been graded in order of the severity to be awarded to a charged Government servant in proportion to the gravity of misconduct/negligence which has given rise to the charge-sheet. While the major penalties of compulsory retirement, removal from service and dismissal from service have been included as clauses (vii), (viii) and (ix) of the said rule 11, the penalty of reduction to a lower time scale of pay, grade, post or· Service has been incorporated therein as clause (vi). This clause also provides that while imposing this penalty, the Disciplinary Authority or the Appellate/Revision Authority is also required to indicate in the penalty order whether or not the individual charged Government servant would be eligible for restoration to the grade/post or Service from the conditions for such restoration. It will, therefore, be seen that the penalty has been provided to be awarded to an individual who may not be sent out of Government service (through dismissal/removal etc.) but who needs to be given a very severe penalty in view of the gravity of his misconduct.

[Para 4 of the OM No. 11012/2/2005-Estt.(A) dated 14.05.2007]

3.4 Attention in this connection is also invited to the Government of India, MHA O.M. No. 9/13/92-Estt. (D) dated 10.10.1962 and No. 9/30/63-Estt. (D) dated 07.02.1964 which stipulates that an order imposing the penalty of reduction to a lower service, grade or post or to a lower time-scale

should invariably specify the period of reduction unless the clear intention is that the reduction should be permanent or for an indefinite period. These instructions also indicate the manner in which the order should be framed when the reduction is for specified period or indefinite period. In case the intention of the Competent Authority is to award the penalty of reduction on permanent basis, the same may be specifically stated in the order so that the intention is conveyed to the Government servant in unambiguous terms and he is afforded full opportunity for submission of his appeal as provided in the rules.

[Para 4 of the OM No. 11012/2/2005-Estt.(A) dated 14.05.2007]

3.5 Illustrations/examples, total 8 in number, prescribed in the OM No. 11012/15/2016-Estt.A-III dated 18.06.2019 are available at '**Annexure-1**' of this document.

4. Implementation of second penalty (or multiple penalties) on serving charged officers during the currency of first penalty

4.1 All the Disciplinary Authorities should clearly indicate in the punishment order whether the two penalties (or multiple penalties) would run concurrently or consecutively, while awarding second or subsequent penalties during the currency of earlier penalty/penalties. It is, however, clarified that where, such a specific mention has not been made, the two/ all penalties should run concurrently and the higher penalty, even though ordered later, should be implemented immediately and after expiry of its period, if the currency of the period of earlier punishment still continues, the same may be implemented for the balance period.

[OM No. 11012/11/2018-Estt.A-III dated 28.10.2022]

4.2 Total 3 illustrations/ Examples prescribed in the OM No. 11012/11/2018-Estt.A-III dated 28.10.2022 are available at **'Annexure-2'** of this document.

5. Recovery of pecuniary loss caused by a Government servant

5.1 The DGP&T's letter No. 3/313/70-Disc-I dated 17.08.1971 provide that recovery from the pay of a Government servant as a punishment for any pecuniary loss caused by him to the Government by negligence or breach of orders, should not exceed 1/3 of his basic pay (i.e. excluding dearness pay or any other allowances) and should not be spread over a period of more than three years. However, no such limits have been prescribed in the statutory rules i.e. In Rule 11 (iii) of the CCS (CCA) Rules, 1965.

5.2 The above DGP&T instructions prescribed the procedure to effect the recovery of the amount levied as penalty in terms of Rule 11 (iii) of the CCS (CCA) Rules, 1965 and these procedural Instructions cannot amend, supercede, or modify the substantive provisions of Rule 11 (iii) of the CCS

(CCA) Rules, 1965. While it is expected that in imposing the penalty of recovery of pecuniary loss the disciplinary authority should not display such severity that a Government servant suffers hardship disproportionate to his negligence/misconduct that led to the loss, it is not necessary to fix a rigid limit for the purpose of such recovery. The DGP&T instructions would, therefore, be treated as unwarranted. Therefore, the implication of this OM is to recover the entire loss from the delinquent official but the recovery may be spread over till entire loss is recovered.

[OM No. 11012/1/2000-Estt.(A) dated 06.09.2000]

6. Distinction between censure and warning

6.1 Warning is administrated by any authority superior to a Government employee in the event of minor lapses like negligence, carelessness, lack of thoroughness and delay etc. It is an administrative device in the hands of superior authorities for cautioning the Government employees with a view to toning up efficiency and maintaining discipline. There is, therefore, no objection to the continuance of this system. However, where a copy of the warning is also kept in the Confidential Report dossier, it will be taken to constitute an adverse entry and the officer so warned will have the right to represent against the same in accordance with the existing instructions relating to communication of adverse remarks and consideration of representations against them.

[Para 2(i) of the OM No. 11012/12/2016-Estt.A-III dated 06.12.2016]

6.2 Where a departmental proceeding had been completed and it is considered that the officer concerned deserves to be penalized, he should be awarded one of the recognized statutory penalties as given in Rule 11 of eth CCS (CCA) Rules, 1965. In such a situation, a recordable warning should not be issued as it would for all practical purposes, amount to "censure" which is a formal punishment and which can only be awarded by a competent disciplinary authority after following the procedure prescribed in the relevant disciplinary rules. The Delhi High Court has, in the case of Nadhan Singh Vs Union of India, also expressed the view that warning kept in the C.R. dossier has all the attributes of "censure". In the circumstances, as already stated, where it is considered after the conclusion of disciplinary proceedings that some blame attaches to the officer concerned which necessitates cognizance of such fact the disciplinary authority should award the penalty of "censure" at least. If the intension of the disciplinary authority is not to award a penalty of "censure", then no recordable warning should be awarded. There is no restriction on the right of the disciplinary authority to administer oral warning or even warning in writing which do not form part of character roll.

[Para 1(ii) of the OM No. 22011/2/78-Ests.(A) dated 16.02.1979]

6.3 There is no objection to the continuance of the practice of issuing oral or written warnings. However, where a copy of the warning is also kept on the Confidential Report dossier, it will be taken to constitute an adverse entry and the officer so warned will have the right to represent against the same in accordance with the existing instructions relating to communication of adverse remarks and consideration of representations against them.

[Para 2(i) of the OM No. 1012/6/2008-Estt.(A) dated 07.07.2008]

6.4 Warning, letter of caution, reprimands or advisories administered to Government servants do not amount to a penalty and, therefore, will not constitute a bar for consideration of such Government servant for promotion

[Para 2(i) of the OM No. 1012/6/2008-Estt.(A) dated 07.07.2008]

[Para 2(iii) of the OM No. 11012/12/2016-Estt.A-III dated 06.12.2016]

6.5 Where a departmental proceedings has been instituted under the provision of CCS (CCA) Rules, 1965, after the conclusion of disciplinary proceedings, the officer is either exonerated or where it is considered that some blame attached to the officer, he should be awarded one of the recognized statutory penalties as given in Rule 11 of the CCS (CCA) Rules, 1965 i.e. at lease 'Censure' should be imposed. In such a situation, a warning, recordable or otherwise, should not be issued.

[Para 2(ii) of the OM No. 11012/12/2016-Estt.A-III dated 06.12.2016]

7. In case any reference to the relevant OM is required, the same may be accessed by clicking on the hyperlink of the OMs. List of the OMs mentioned in this document are as under:

(i) OM No. 11012/11/2018-Estt.A-III dated 28.10.2022
(ii) OM No. 11012/15/2016-Estt.A-III dated 18.06.2019
(iii) OM No. 11012/12/2016-Estt.A-III dated 06.12.2016
(iv) OM No. 6/3/2013-Estt (Pay-I) dated 06.02.2014
(v) OM No. 11012/6/2008-Estt.(A) dated 07.07.2008
(vi) OM No. 11012/2/2005-Estt.(A) dated 14.05.2007
(vii) OM No. 11012/1/2000-Estt.(A) dated 06.09.2000
(viii) OM No. 11012/2/88-Estt(A) dated 02.02.1989
(ix) OM No. 22011/2/78-Ests.(A) dated 16.02.1979

ANNEXURE-I

ILLUSTRATIONS

Reduction to lower stage in the time-scale of Pay

Example

	Level	Cell	Pay
On the date of Penalty	9	7	Rs. 63300
Reduction by 1 Stage	9	6	Rs. 61500
Reduction by 2 Stage	9	5	Rs. 59700
Reduction by 3 stage	9	4	Rs. 58000
Reduction by 4 stage	9	3	Rs. 56300
Reduction by 5 stage	9	2	Rs. 54700

Example: 2

	Level	Cell	Pay
On the date of Penalty	9	3	Rs. 56300
Reduction by 1 Stage	9	2	Rs. 54700
Reduction by 2 Stage	9	1	Rs. 53100
Reduction by 3 stage	**	**	**
Reduction by 4 stage			
Reduction by 5 stage			

** In the above illustration, a penalty of reduction by more than two stages would fall below the first cell of the same Level, such a penalty therefore, would not be implementable. Therefore, while imposing the penalty of reduction to a lower stage in time-scale of pay under Rule 11 (v) of the CCS (CCA) Rules, 1965, Disciplinary Authority may weigh all factors before deciding upon the quantum of penalty, i.e. the number of stages by which the pay is to be reduced.

Case History No. 1

(i) Case 1: Reduction to a lower stage [penalty under Rule 11 (iii a)]

The penalty of reduction to a lower stage in the time-scale of pay by one stage for a period of one year, without cumulative effect and not adversely affecting his pension is imposed on a Government servant w.e.f. 13.08.2017. The Government servant is drawing Rs. 50500 in Level 7 of Pay Matrix. Pay would be fixed on following manner:

	When the date of increment is 1st January	When the date of Increment is 1st July
Pay when Penalty imposed	Rs. 50500 [5th Cell of Level 7]	Rs. 50500 [5th Cell of Level 7]

Reduced Pay w.e.f. 13.08.2017 [pay during the currency period from 13.08.2017 to 12.08.2018]	Rs. 49000 [4th Cell of Level 7]	Rs. 49000 [4th Cell of Level 7]
Increment (notional)	**On 1st January, 2018** **Rs. 52000 [6th Cell of Level 7]**	**On 1st July, 2018** **Rs. 52000 [6th Cell of Level 7]**
Pay w.e.f. 13.08.2018	Rs. 52000 [6th Cell of Level 7] w.e.f. 1.01.2019, his pay will be 53600 [7th Cell of Level 7] after drawl of due increment	Rs. 52000 [6th Cell of Level 7] On 1.07.2019, his pay will be 53600 [7th Cell of Level 7] after drawl of due increment

Case History No. 2

(ii) Case 2: Reduction to a lower stage [penalty under Rule 11 (iii a)]

The penalty of reduction to a lower stage in the time-scale of pay by one stage for a period of two years, without cumulative effect and not adversely affecting his pension is imposed on a Government servant w.e.f. 13.08.2017. The Government servant is drawing Rs. 50500 in Level 7 of Pay Matrix. Pay would be fixed on following manner:

	When the date of increment is 1st January	When the date of Increment is 1st July
Pay when Penalty imposed	Rs. 50500 [5th Cell of Level 7]	Rs. 50500 [5th Cell of Level 7]
Reduced Pay w.e.f. 13.08.2017 [pay during the currency period from 13.08.2017 to 12.08.2019]	Rs. 49000 [4th Cell of Level 7]	Rs. 49000 [4th Cell of Level 7]

Increment (notional)	**On 1st January, 2018** **Rs. 52000 [6th Cell of Level 7]** **On 1st January, 2019** **Rs. 53600 [7th Cell of Level 7]**	**On 1st July, 2018** **Rs. 52000 [6th Cell of Level 7]** **On 1st July, 2019** **Rs. 53600 [7th Cell of Level 7]**
Pay w.e.f. 13.08.2019	Rs. 53600 [7th Cell of Level 7] w.e.f. 1.01.2020, his pay will be 55200 [8th Cell of Level 7] after drawl of due increment	Rs. 53600 [7th Cell of Level 7] w.e.f. 1.07.2020, his pay will be 55200 [8th Cell of Level 7] after drawl of due increment

Case History No. 3

(iii) Case 3: Withholding of increment [Penalty under Rule 11(iv)

The penalty of withholding of one increment for a period of two years is imposed on a Government servant on 13.08.2017. The Government servant is drawing Rs. 50500 in Level 7 of Pay Matrix. Pay would be fixed on the following manner.

	When the date of increment is 1st January	When the date of Increment is 1st July
Pay when Penalty imposed i.e. 13.08.2017	Rs. 50500 [5th Cell of Level 7]	Rs. 50500 [5th Cell of Level 7]
Pay during the currency period	The increment due on 01.01.2018 will be withheld for two years i.e. upto 31.12.2019.	The increment due on 01.07.2018 will be withheld for two years i.e. upto 30.06.2020.

	As such, the pay w.e.f. 13.08.2017 will be as under: (i) Pay w.e.f. 13.08.2017 to 31.12.2017 will be Rs. 50500 [5th Cell of Level 7] (ii) Pay w.e.f. 1.01.2018 to 31.12.2018 will Rs. 50500 [5th Cell of Level 7] [**due to imposition of penalty**] (iii) Pay w.e.f. 1.01.2019 to 31.12.2019 will be Rs. 52000 [6th Cell of Level 7]	As such, the pay w.e.f. 13.08.2017 will be as under: (i) Pay w.e.f. 13.08.2017 to 30.06.2018 will be Rs. 50500 [5th Cell of Level 7] (ii) Pay w.e.f. 1.07.2018 to 30.06.2019 will be Rs. 50500 [5th Cell of Level 7] [**due to imposition of penalty**] (iii) Pay w.e.f. 1.07.2019 to 30.06.2020 will be Rs. 52000 [6th Cell of Level 7]
Increment (notional)	**On 1st January, 2018** **Rs. 52000 [6th Cell of Level 7]** **On 1st January, 2019** **Rs. 53600 [7th Cell of Level 8]**	**On 1st July, 2018** **Rs. 52000 [6th Cell of Level 7]** **On 1st July, 2019** **Rs. 53600 [7th Cell of Level 8]**
Pay after the currency period	w.e.f 1.01.2020 = Rs. 55200 [8th Cell of Level 7]	w.e.f 1.07.2020 = Rs. 55200 [8th Cell of Level 7]
Currency Period	**13.08.2017 to 31.12.2019**	**13.08.2017 to 30.06.2020**

Case History No. 4

(iv) Case 4: Withholding of increment [Penalty under 11(iv)

The penalty of Withholding of one increment **for a period of six months is** imposed on a Government servant on 13.08.2017. The Government servant is drawing Rs. 50500 in Level 7 of Pay Matrix. Pay would be fixed on following manner:

	When the date of increment is 1st January	When the date of Increment is 1st July
Pay when Penalty imposed	Rs. 50500 [5th Cell of Level 7]	Rs. 50500 [5th Cell of Level 7]
Pay during the currency period	The increment due on 01.01.2018 will be withheld i.e. upto 30.06.2018. As such, the pay w.e.f. 13.08.2017 to 30.06.2018 = Rs. 50500 [5th Cell of Level 7]	The increment due on 01.07.2018 will be withheld i.e. upto 31.12.2018. As such, the pay w.e.f. 13.08.2017 to 31.12.2018 = Rs. 50500 [5th Cell of Level 7]
Increment (notional)	**On 1st January, 2018** **Rs. 52000 [6th Cell of Level 7]**	**On 1st July, 2018** **Rs. 52000 [6th Cell of Level 7]**
Pay after the currency period	w.e.f 1.07.2018 = Rs. 52000 [6th Cell of Level 7] [w.e.f. 01.01.2019 i.e. date of next increment, the pay will be Rs. 53600 (7th Cell of Level 7).	w.e.f 1.1.2019 = Rs. 52000 [6th Cell of Level 7] [w.e.f. 01.07.2019 i.e. date of next increment, the pay will be Rs. 53600 (7th Cell of Level 7).
Currency Period	**13.08.2017 to 30.06.2018**	**13.08.2017 to 31.12.2018**

Case History No. 5

(v) Case 5: Reduction to a lower stage without cumulative effect [penalty under Rule 11(v)]:-

The penalty of reduction to a lower stage by two stages in the time-scale of pay for a period of one year is imposed on a Government servant w.e.f. 13.08.2017. It is further directed that the **Government servant would earn increment during the period** and **the reduction will not have the effect of postponing his future increments of pay**. The Government servant is drawing Rs. 50500 in Level 7 of Pay Matrix. Pay would be fixed on following manner:

	When the date of increment is 1st January	When the date of Increment is 1st July

Pay when Penalty imposed	Rs. 50500 [5th Cell of Level 7]	Rs. 50500 [5th Cell of Level 7]
Reduced during the currency period w.e.f. 13.08.2017 to 12.08.2018	(i) Reduced pay w.e.f. 13.08.2017 to 31.12.2017, will be Rs. 47600 [3rd Cell of Level 7] (ii) Pay w.e.f. 1.01.2018 to 12.08.2018 after drawl of increment will be Rs. 49000/- [4th Cell of Level 7]	(i) Reduced pay w.e.f. 13.08.2017 to 30.06.2018, will be Rs. 47600 [3rd Cell of Level 7] (ii) Pay w.e.f. 1.07.2018 to 12.08.2018 after drawl of increment will be Rs. 49000/- [4th Cell of Level 7]
Increment (notional)	**On 1st January, 2018** **Rs. 52000 [6th Cell of Level 7]**	**On 1st July, 2018** **Rs. 52000 [6th Cell of Level 7]**
Pay on completion of Penalty (w.e.f. 13.08.2018)	Rs. 52000 [6th Cell of Level 7]	Rs. 52000 [6th Cell of Level 7]
Next increment	w.e.f. 1.01.2019, his pay will be 53600 [7th Cell of Level 7] after drawl of due increment	w.e.f. 1.07.2019, his pay will be 53600 [7th Cell of Level 7] after drawl of due increment

Case History No. 6

(vi) Case 6: Reduction to a lower stage without cumulative effect [penalty under Rule 11(v)]

The penalty of reduction to a lower stage by two stages in the time-scale of pay for a period of one year is imposed on a Government servant w.e.f. 13.08.2017. It is further directed that the Government servant **would not earn increment** during the period and the **reduction will not have the effect of postponing future increments of pay**. The Government servant is drawing Rs. 50500 in Level 7 of Pay Matrix. Pay would be fixed on following manner:

	When the date of increment is 1st January	When the date of Increment is 1st July

Pay when Penalty imposed	Rs. 50500 [5th Cell of Level 7]	Rs. 50500 [5th Cell of Level 7]
Reduced Pay w.e.f. 13.08.2017	Rs. 47600 [3rd Cell of Level 7]	Rs. 47600 [3rd Cell of Level 7]
Pay during the currency period	**Pay w.e.f. 13.08.2017 to 12.08.2018 will be Rs. 47600 [3rd Cell of Level 7]**	**Pay w.e.f. 13.08.2017 to 12.08.2018 will be Rs. 47600 [3rd Cell of Level 7]**
Increment (notional)	**On 1st January, 2018** **Rs. 52000 [6th Cell of Level 7]**	**On 1st July, 2018** **Rs. 52000 [6th Cell of Level 7]**
Pay w.e.f. 13.08.2018	Rs. 52000 [6th Cell of Level 7] Rs. 53600 [7th Cell of Level 7] {w.e.f. 1.01.2019}	Rs. 52000 [6th Cell of Level 7] Rs. 53600 [7th Cell of Level 7] {w.e.f. 1.07.2019}

Case History No. 7

(vii) Case 7: Reduction to a lower stage with cumulative effect [penalty under Rule 11(v)]

The penalty of reduction to a lower stage by two stages in the time-scale of pay for a period of one year is imposed on a Government servant w.e.f. 13.08.2017. It is further directed that the Government servant **would not earn increment** during the period and the **reduction will have the effect of postponing future increments of pay**. The Government servant is drawing Rs. 50500 in Level 7 of Pay Matrix. Pay would be fixed on following manner:

	When the date of increment is 1st January	When the date of Increment is 1st July
Pay when Penalty imposed	Rs. 50500 [5th Cell of Level 7]	Rs. 50500 [5th Cell of Level 7]
Reduced Pay w.e.f. 13.08.2017	Rs. 47600 [3th Cell of Level 7]	Rs. 47600 [3th Cell of Level 7]
Pay during the currency period	**Pay w.e.f. 13.08.2017 to 12.08.2018 will be Rs.**	**Pay w.e.f. 13.08.2017 to 12.08.2018 will be Rs. 47600 [3rd Cell of Level 7]**

	47600 [3rd Cell of Level 7]	
Increment (notional)	**No increment during the period of penalty**	**No increment during the period of penalty**
Pay on completion of penalty as on 13.08.2018	Since future increment is to be postponed to adversely affect his pension, no increment will be given on the pre- penalty pay and on restoration pay will remain same as **Rs. 50500 (5th Cell of Level 7]**	Since future increment is to be postponed to adversely affect his pension, no increment will be given on the pre- penalty pay and on restoration pay will remain same as **Rs. 50500 (5th Cell of Level 7]**
Next increment	Next increment will be due w.e.f. 01.01.2019 raising his pay to Rs. 52000 (6th Cell of Level 7]	Next increment will be due w.e.f. 01.07.2019 raising his pay to Rs. 52000 (5th Cell of Level 7)

Case History No. 8

(viii) Case 8: Reduction to lower time-scale of pay/ grade

The penalty of reduction to the lower grade carrying Level 8 for a period of two years is impose on Government servant who is at Level 9 w.e.f. 04.11.2018, with further directions that th **reduction shall not postpone his future increments** and on the expiry of the period he sha regain his original seniority in the higher grade.

On 4.11.2018, the Government servant is drawing Rs. 58000 in Level 9 of Pay Matrix. Th Government servant had been promoted from the post in Level 8 to the post in Level 9 of the Pa Matrix on 13.08.2016 and on promotion his pay was fixed at Rs. 54700/-. At the time of promotio his pay was Rs. 52000 in Level 8 of the Pay Matrix.

In this case the pay in Level 8 would need to be fixed w.e.f. 4.11.2018 to 3.11.2020 as if he ha continued in Level 8. Pay would be regulated as under:

Date	Level 9	Lavel 8
13.08.2016	54700 [2nd Cell in Level 9]	52000 [4th Cell in Level 8]@
1.07.2017	56300 [3rd Cell in Level 9]	53600 [5th Cell in Level 8] @
1.07.2018	58000 [4th Cell in Level 9]	55200 [6th Cell in Level 8] @
3.11.2018	58000 [4th Cell in Level 9]	
4.11.2018 [date of penalty order]		**55200 [6th Cell in Level 8] [after imposition of penalty]**
		(i) Reduced pay w.e.f. 4.11.2018 to 30.06.2019 will be 55200 [**6th Cell in Level 8**]

Pay during the currency period from 4.11.2018 to 3.11.2020		(ii) Pay w.e.f. 1.07.2019 to 30.06.2010 will be Rs. 56900/- [7th Cell in Level 8] (iii) Pay w.e.f. 1.07.2020 to 3.11.2020 will be Rs. 58600 [8th Cell in Level 8]
Notional pay during the currency period	**On 1st July, 2019** **Rs. 59700 [5th Cell in Level 9]** **On 1st July, 2020** **Rs. 61500 [6th Cell in Level 9]**	
4.11.2020 [After completion of penalty]	61500 [6th Cell in Level 9]	
Next Increment 1.7.2021	63300 [7th Cell in Level 9]	

NOTE:

1. @ Notional pay in Level 8 from 13.08.2016 to 3.11.2018.

2. Under FR-28, the authority which orders the reduction of a Government servant as a penalty from a higher grade or post to a lower grade or post may allow him to draw pay at any stage, not exceeding the maximum of the lower grade or post, which it may think proper. Provided the pay allowed to be drawn by a government servant shall not exceed the pay which he would have drawn by the operation of FR 22 read with clause (b) or (c), as the case may be of FR 26. This illustration is where no such orders have been passed. Where the disciplinary authority has specified the pay to be drawn in the lower post pay will be drawn as per those directions.

ANNEXURE-2

Illustration 1

A Government servant was drawing Basic Pay of Rs.65,200/- in Level 9 (Cell No.8). Next date of increment being 1st July, 2019.

1st Penalty: Vide Order dated 13.08.2018 a penalty of reduction to a lower stage by one stage in the time-scale of pay for a period four years, with further directions that the Government servant

shall earn increment of pay during the period of such reduction and on the expiry of such period, the reduction will not have the effect of postponing his future increments was imposed.(Penalty period w.e.f. 13.08.2018 to 12.08.2022).

2nd Penalty: Vide Order dated 10.12.2018, penalty of reduction to a lower time-scale of pay [*Level 8*] for a period of two years is imposed with further direction that the period of reduction to time scale of pay shall not operate to postpone future increment of his pay. (Penalty period w.e.f. 10.12.2018 to 09.12.2020).

Event	Basic Pay	1st Penalty	2nd Penalty
Pay immediately before imposition of 1st penalty i.e. on 12.08.2018	Rs.65,200/- [Level 9 (Cell No. 8)]	-	-
Pay w.e.f. 13.08.2018 on imposition of 1st penalty	-	**Rs.63,300/- Level 9(Cell No.7)**	-
Pay on imposition of 2nd penalty w.e.f. 10.12.2018 *	-	-	**Rs.62,200/- Level 8 (Cell No.10)**
Pay on 01.07.2019 - Annual Increment	**Notional** Rs.67200/- Level 9 (Cell No.9)	**Notional** Rs.65,200/- Level 9 (CellNo.8)	**Rs.64,100/- Level 8 (Cell No.11)**
Pay on 01.07.2020 – Annual Increment Till 09.12.2020	**Notional** Rs.69,200/- Level 9 (Cell No.10)	**Notional** Rs.67,200/- Level 9 (Cell No.9)	**Rs.66,000/- Level 8 (Cell No.12)**
Pay on 10.12.2020 – (end of 2nd penalty and continuation of 1st penalty)	-	**Rs.67,200/- Level 9 (Cell No.9)**	-
Pay on 01.07.2021	**Notional** Rs.71,300/- Level 9 (Cell No.11)	**Rs.69,200/- Level 9 (CellNo.10)**	-
Pay on 01.07.2022 Till 12.08.2020	**Notional** Rs.73,400/- Level 9 (Cell No.12)	**Rs.71,300/- Level 9 (Cell No.11)**	-
Pay on 13.08.2022	**Rs.73,400/-**	-	-

(on end 1st penalty)	**Level 9 (Cell No.12)**		

**Assuming thatthe Government servant was promoted from Level 8 to Level 9 w.e.f. 10.10.2016 and his pay was fixed on promotion under F.R. 22 (I) (a) (1).*

Regulation of his pay on imposition of 2nd penalty:

Date	Pay in Level 8	Pay in Level 9
09.10.2016 (immediately prior to his promotion) Level 8 (Cell No.8)	Rs.58,600/-	-
10.10.2016 on promotion to Level 9	Rs.58,600/- (Notional)	Rs.61,500/-
01.07.2017 – Annual Increment	Rs.60,400/- (Notional)	Rs.63,300/-
01.07.2018 – Annual Increment	Rs.62,200/- (Notional)	Rs.65,200/-
Pay as on the date of 2nd penalty i.e. 10.12.2018	**Rs.62,200/-**	

Illustration 2

Government servant was drawing Basic pay in Level 11 in Pay matrix at the stage Rs.83,300/- with next date of increment being 1stJuly, 2018.

1st Penalty: Withholding of increments for a period of 3 years imposed on 15.03.2018. [Period of penalty 15.03.2018 to 30.06.2021]

2nd Penalty: Reduction to a lowerstage in the time-scale of pay by threestages for a period ofoneyear w.e.f. 20.10.2018with further directions that the Government servant will earn increments of pay during the period of such reduction and not having the effect of postponing the future increments of pay. (penalty w.e.f. 20.10.2018 to 19.10.2019)

Event	Basic Pay	1st Penalty	2nd Penalty
Pay immediately before imposition of 1st penalty i.e. on 14.03.2018	Rs.83,300/- Level 11 (Cell No.8)	-	-

Pay w.e.f. 15.03.2018 on imposition of 1st penalty	-	**Rs.83,300/-** **Level 11 (Cell No.8)**	-
Pay on 01.07.2018 (Date of annual increment)	**Notional** Rs.85,800/- Level 11 (Cell No.9)	**Rs.83,300/-** **Level 11 (Cell No.8)**	
Pay on 20.10.2018 on imposition of 2nd penalty	-	-	**Rs.78,500/-** **Level 11 (Cell No.6)**
Pay on 01.07.2019 (Date of annual increment) Till 19.10.2019	**Notional** Rs.88,400/- Level 11 (Cell No.10)	**Notional** Rs.83,300/- Level 11 (Cell No.8)	**Rs.80,900/-** **Level 11 (Cell No.7)**
Pay w.e.f. 20.10.2019 (on completion of 2nd penalty and continuation of 1st penalty)	-	**Rs.83,300/-** **Level 11 (Cell No.8)**	-
Pay on 01.07.2020 (Date of annual increment) and till 30.06.2021	**Notional** Rs.91,100/- Level 11 (Cell No.11)	**Rs.83,300/-** **Level 11 (Cell No.8**	-
Pay on 1.07.2021	**Rs.93,800/-** **Level 11 (Cell No.12)**	-	-

Illustration 3

A Government servant was drawing Basic pay in Level 11 in Pay matrix at the stage Rs.83,300/- with next date of increment being 1stJuly, 2018.

1st Penalty: Withholding of increments for a period of 4 years imposed w.e.f. 15.03.2018.[Period of penalty 15.03.2018 to 30.06.2022]

2nd Penalty: Reduction to a lowerstage in the time-scale of pay by three stages for a period ofthree year w.e.f. 20.10.2018with further directions that the Government servant will earn increments of pay during the period of such reduction and not having the effect of postponing the future increments of pay (penalty w.e.f. 20.10.2018 to 19.10.2021).

Event	Basic Pay	1st Penalty	2nd Penalty
Pay immediately before imposition of 1st penalty i.e. on 14.03.2018	Rs.83,300/- Level 11 (Cell No.8)	-	-
Pay w.e.f. 15.03.2018 on imposition of 1st penalty	-	**Rs.83,300/-** **Level 11 (Cell No.8)**	-
Pay on 01.07.2018 (Date of annual increment)	**Notional** Rs.85,800/- Level 11 (Cell No.9)	**Rs.83,300/-** **Level 11 (Cell No.8)**	-
Pay on 20.10.2018 on imposition of 2nd penalty	-	-	**Rs.78,500/-** **Level 11 (Cell No.6)**
Pay on 01.07.2019 (Date of annual increment)	**Notional** Rs.88,400/- Level 11 (Cell No.10)	**Notional** Rs.83,300/- Level 11 (Cell No.8)	**Rs.80,900/-** **Level 11 (Cell No.7)**
Pay on 01.07.2020 (Date of annual increment)	**Notional** Rs.91,100/- Level 11 (Cell No.11)	**Notional** Rs.83,300/- Level 11 (Cell No.8)	**Rs.83,300/-** **Level 11 (Cell No.8)**
Pay on 01.07.2021 (Date of annual increment) to till 30.06.2022 (completion of 1st penalty)	**Notional** Rs.93,800/- Level 11 (Cell No.12)	**Rs.83,300/-** **Level 11 (Cell No.8)**	**Notional** Rs.85,800/- Level 11 (Cell No.9) till 19.10.2021 i.e. end of 2nd penalty)
Pay on 01.07.2022	**Rs.96,600/-** **Level 11 (Cell No.13)**	-	-

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(III) <u>SIMULTANEOUS ACTION OF PROSECUTION AND INITIATION OF DEPARTMENTAL PROCEEDINGS</u>

Hon'ble Supreme Court in their various judgements had held that the departmental proceedings and proceedings in a criminal case can proceed simultaneously. On the basis of these judgements, Department of Personnel and Training issued two detailed executive instructions vide OM No. 11012/6/2007-Estt.A-III dated 01.08.2007 and 21.07.2016. The essence of these instructions in the matter has been summarized in the following paras for guidance and better understanding: -

1. In many cases charge sheets are not issued despite clear *prima facie* evidence of misconduct on the ground that the matter is under investigation by an investigating agency like Central Bureau of Investigation. The Hon'ble Supreme Court, in the case of Ajay Kumar Choudhary vs Union Of India Through Its Secretary & Anr, Civil Appeal
No. 1912 of 2015, (JT 2015 (2) SC 487), 2015(2) SCALE, superseded the direction of the Central Vigilance Commission and held that pending a criminal investigation, departmental proceedings are to be held in abeyance.

(Para 1 and 2 of the OM No. 11012/6/2007-Estt.A-III dated 21.07.2016)

2 Issue of charge sheet against an officer against whom an investigating agency is conducting investigation or against whom a charge sheet has been filed in a court

2.1 In serious cases involving offences such as bribery/corruption etc., action should be launched for prosecution as a matter of course. The Hon'ble Supreme Court had held in their various judgements, the important ones being, State of Rajasthan Vs. B.K. Meena & Others(1996 6 SCC 417), Capt. M. Paul Anthony Vs. Bharat Gold Mines Limited (1999 3 SCC 679), Kendriya Vidyalaya Sangathan & Others Vs. T. Srinivas (2004 (6) SCALE 467) and Noida Entrepreneurs Association Vs. Noida (JT 2007 (2) SC 620), that merely because a criminal trial is pending, a departmental inquiry involving the very same charges as is involved in the criminal proceedings is not barred. The approach and objective in the criminal proceedings and disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against the Government servant are established and if established, what sentence can be imposed on him. In serious nature of cases like acceptance of illegal gratification, the desirability of continuing the concerned Government servant in service in spite of the serious charges leveled against him may have to be considered by the Competent Authority to proceed with departmental action.

[Para 2 of the OM No. 11012/6/2007-Estt.(A) dated 01.08.2007]

2.2 It has been reaffirmed in a catena of cases that there is no bar in law for initiation of simultaneous criminal and departmental proceedings on the same set of allegations. In State *of Rajasthan vs. B.K. Meena & Ors.* (1996) 6 SCC 417 = AIR 1997 SC 13 = 1997 (1) LLJ 746 (SC), the Hon'ble Supreme Court has emphasised the need for initiating departmental proceedings in such cases in these words:

> *It must be remembered that interests of administration demand that the undesirable elements are thrown out and any charge of misdemeanor is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanor should be*

continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings.

[Para 4 of the OM No. 11012/6/2007-Estt.(A-III) dated 21.07.2016]

2.3 In the case of Hindustan Petroleum Corporation Ltd. Vs. Sarvesh Berry [2004 (10) SCALE Page 340], it has been held in Para 9 that "it is not desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the back drop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law."

[Para 4 of the OM No. 11012/6/2007-Estt.(A) dated 01.08.2007]

2.4 In *Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr. ,* (1999) 3 SCC 679, the Supreme Court has observed that departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

[Para 5 of the OM No. 11012/6/2007-Estt.(A-III) dated 21.07.2016]

3. Effect of acquittal in a criminal case on departmental inquiry

3.1 The question as to what is to be done in the case of acquittal in a criminal case has been answered by the Hon'ble Supreme Court in *R.P. Kapur vs. Union of India & Anr. AIR 1964 SC 787* (a five Judge bench judgement) as follows:

If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted. Even in case of acquittal proceedings may follow where the acquittal is other than honourable.

[Para 6 of the OM No. 11012/6/2007-Estt.(A-III) dated 21.07.2016]

3.2 The issue was explained in the following words by the Hon'ble Supreme Court in the case of *Ajit Kumar Nag v G M, (PJ), Indian Oil Corporation Ltd.,* (2005) 7 SCC 764:

Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation.

[Para 7 of the OM No. 11012/6/2007-Estt.(A-III) dated 21.07.2016]

3.3 The judgement of the Hon'ble Supreme Court in *G.M. Tank vs State of Gujarat (2006)* 5 SCC 446 has reaffirmed the principles laid down in *R.P. Kapur* (supra). In *G.M. Tank* case, Court observed that there was not an iota of evidence against the appellant to hold that he was guilty. As the criminal case and the departmental proceedings were based on identical set of facts and evidence, the Court set aside the penalty imposed in the departmental inquiry also.

[Para 8 of the OM No. 11012/6/2007-Estt.(A-III) dated 21.07.2016]

3.4 Ratio in the *G.M. Tank* judgement should not be misconstrued to mean that no departmental proceedings are permissible in all cases of acquittal or that in such cases the penalty already imposed would have to be set aside. What the Hon'ble Court has held that is no departmental inquiry would be permissible when the evidence clearly establishes that no charge against the Government servant may be made out.

[Para 9 of the OM No. 11012/6/2007-Estt.(A-III) dated 21.07.2016]

4 Action where an employee convicted by a court files an appeal in a higher court

4.1 In many cases Government servants who have been found guilty by lower courts and have filed appeals in higher courts represent for reinstatement/ setting aside the penalty imposed under Rule 19(i) of the CCS (CCA) Rules, 1965. In such cases, the following observations of the Hon'ble Supreme Court in *K.C. Sareen vs C.B.I., Chandigarh,* 2001 (6) SCC 584 are to be kept in view:

> *When a public servant was found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public interest which suffers and sometimes even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office it impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralizing the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction the fall out would be one of shaking the system itself*.

[Para 10 of the OM No. 11012/6/2007-Estt.(A-III) dated 21.07.2016]

4.2 Thus action against a convicted Government servant should be taken straight away under Rule 19(1). *An appeal against the conviction or even a stay on the sentence will have no effect unless the conviction itself is stayed.*

[Para 11 of the OM No. 11012/6/2007-Estt.(A-III) dated 21.07.2016]

4.3 In view of the law laid down in various judgements, including the ones quoted above, in cases of serious charges of misconduct, particularly involving moral turpitude, the Ministries/Departments should keep the following points in view to take prompt action:

(i) All incriminating documents should be seized promptly to avoid their tempering or destruction of evidence.

(ii) Particular care needs to be taken for retention of copies of such documents while handing over the same to an investigating agency. These documents may be attested after

comparison with the originals.

(iii) In case the documents have been filed in a court, certified copies of documents may be obtained.

(iv)Documents and other evidence must be examined to see whether any misconduct, including favour, harassment, negligence or violation of rules/instructions has been committed. If there is a prima facie evidence of misconduct, charge sheet under the appropriate rule must be issued.

(v) Court judgements should be promptly acted upon:

a) in cases of conviction action is to be taken under Rule 19(i) of the CCS (CCA) Rules, 1965;

b) in cases of acquittal also, if the Court has not acquitted the accused honourably, charge sheet may be issued;

c) an acquittal on technical grounds or where a benefit of doubt has been given to the accused will have no effect on a penalty imposed under CCS (CCA) Rules, 1965, as while in a criminal trial the charge has to be proved beyond reasonable doubt, in the departmental inquiry the standard of evidence is preponderance of probability.

(vi)An appeal by the accused against conviction, but where the conviction has not been overturned/ stayed, will have no effect on action taken under Rule 19(i) of the CCS (CCA) Rules, 1965, even if Court has directed stay/suspension of the sentence.

[Para 12 of the OM No. 11012/6/2007-Estt.(A-III) dated 21.07.2016]

5. In case any reference to the relevant OM is required, the same may be accessed by clicking on the hyperlink of the OMs. List of the OMs mentioned in this document is as under:

(a) OM No. 11012/6/2007-Estt.(A) dated 01.08.2007
(b) OM No. 11012/6/2007-Estt.(A-III) dated 21.07.2016

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(IV) SHARING OF ADVICE OF UPSC WITH THE CHARGED OFFICER

Hon'ble Supreme Court in its judgment, on 16.03.2011, while dismissing the Civil Appeal No. 5341 of 2006 in the matter of Union of India & Ors. vs S. K. Kapoor, held that it is a settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge sheeted employee so that he may have a chance to rebut the same. In compliance of the judgement of Hon'ble Supreme Court in S.K. Kapoor case,

provisions regarding supply a copy of the advice of UPSC, in all cases where the Commission is consulted, to the Charged Officer were incorporated by amending the CCS (CCA) Rules, 1965 vide G.S.R. No. 769(E) dated 31.10.2014. After amending these rules two clarificatory instructions were also issued. The essence of these instructions in the matter has been summarized in the following paras for guidance and better understanding: -

1. The rule 15, 16, 17, 19, 27, 29 and 29-A were amended vide G.S.R. No. 769 (E) dated 31.10.2014. The amendment provides that a copy of the UPSC advice is to be supplied to the Government servant and his representation, if any, on such advice is to be considered by the Disciplinary/ Appellate/ Revisionary/ Reviewing Authority, as the case may be, before passing the final order.

[Para 3 of the OM No. 11012/8/2011-Estt.(A) dated 19.11.2014]

2. In brief, in the disciplinary cases, where the UPSC are to be consulted, the following procedure should be adopted:

(a) The Disciplinary Authority shall forward or cause to be forwarded to UPSC for its advice:

(i) a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge; and
(ii) comments on the representation of the Government servant on the Inquiry report and disagreement note, if any, with all the case records of the inquiry proceedings.

(b) On receipt of the UPSC advice, the Disciplinary Authority shall forward or cause to be forwarded a copy of the advice to the Government servant who shall be required to submit, if he so desires, his written representation/ submission to the Disciplinary Authority within fifteen days. The Disciplinary Authority shall consider such representation and take action as prescribed in sub-rule (4), (5) and (6) of the Rule 15 of the CCS (CCA) Rules, 1965.

[Para 4 of the OM No. 11012/8/2011-Estt.(A) dated 19.11.2014]

3. Similarly, in matters relating to Appeal/ Revision/ Review, a copy of the UPSC advice, if consulted, may be supplied to the Government servant and his representation, if any, thereon may be considered by the Appellate/ Revisionary/ Reviewing Authority before passing final order.

[Para 5 of the OM No. 11012/8/2011-Estt.(A) dated 19.11.2014]

4. Cases decided before the date of this judgement, i.e., 16th March, 2011 need not be reopened. In cases decided after 16th March, 2011, where a penalty was imposed after relying upon the advice of UPSC, but where a copy of such advice was not given to the Charged Officer before the decision, the penalty may be set aside and inquiry taken up from the stage of supply of copy of the advice of UPSC.

[Para 3 of the OM No. 11012/05/2015-Estt.(A-III) dated 14.07.2016]

5. In cases where a penalty of dismissal, removal or compulsory retirement has been imposed, the Charged Officer, if he has not reached the age of superannuation, shall be deemed to be under suspension from the date of original penalty as per rule 10(4) of the CCS (CCA) Rules, 1965.

[Para 4 of the OM No. 11012/05/2015-Estt.(A-III) dated 14.07.2016]

6. Cases where the Government servant has retired shall be dealt with as per rule 69 of CCS (Pension) Rules, 1972 (*now Rule 8 of the CCS (Pension) Rules, 2021*). In the cases of any other penalties, only the penalty will be set aside, but no consequential benefits like arrears of pay shall be allowed. This will be decided by the Competent Authority after conclusion of the further inquiry. Similarly, in a case where a penalty of recovery has been imposed, if the recovery is being made in installments, the recovery shall be suspended pending finalization of further inquiry. No refund of recovery already effected will be made. Whether the money already recovered has been refunded will depend on the decision of the Disciplinary Authority. Where a penalty of withholding of increments has been imposed, if a withheld increment has become due, the same may be released. There is no question of release of any arrears till finalization of the proceedings.

[Para 5 of the OM No. 11012/05/2015-Estt.(A-III) dated 14.07.2016]

7. In case any reference to the relevant OM is required, the same may be accessed by clicking on the hyperlink of the OMs. List of the OMs mentioned in this document is as under:
(a) OM No. 11012/8/2011-Estt.(A) dated 19.11.2014
(b) OM No. 11012/05/2015-Estt.(A-III) dated 14.07.2016

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(V) SPECIAL PROCEDURE IN DISCIPLINARY ACTION

Hon'ble Supreme Court, on 11.07.1985, in Civil Appeal No.6814 of 1983, Civil Appeal No.3484 of 1982 etc. in the case of Tulsi Ram Patel and others, delivered a judgment regarding the scope of second proviso to Art. 311(2) of the Constitution.

2. Article 311 of the Constitution of India

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply —

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

3. The essence of the judgment and scope of exceptional situations listed in clauses (a), (b) and (c) of the second proviso to Art. 311(2) were clarified by Department of Personnel & Training vide OM No. 11012/11/85-Estt.(A) dated 11.11.1985 and 04.04.1986 in the following paragraphs.

4. Article 311(2) of the Constitution concerns itself with the punishment of dismissal, removal or reduction in rank, which comes in the category of major punishment under the service rules providing the procedure for disciplinary action against Government servants. The first step in that procedure is the service of a memorandum of charges or a charge sheet, as popularly known, on the Government servant, listing the charges against him and calling upon him, by a specified date, to furnish a reply either denying or accepting all or any of the charges. An inquiry hence commences under the service rules with the service of the charge sheet. Obviously, if the circumstances even before the commencement of an inquiry are such that the disciplinary authority holds that it is not reasonably practicable to hold an inquiry, no action by way of service of charge sheet would be necessary. On the other hand, if such circumstances develop in the course of inquiry, a charge sheet would already have been served on the Government servant concerned. It is only in three exceptional situations listed in clause (a), (b) and (c) of the second proviso to Article 311(2) that the requirement of holding such an inquiry may be dispensed with.

[Para 2 of the OM No. 11012/11/85-Estt.(A) dated 11.11.1985]

[Para 3 of the OM No. 11012/11/85-Estt.(A) dated 04.04.1986]

5. Even under these exceptional circumstances, the judgement does not give unbridled power to the competent authority when it takes action under any of the three clauses in the second proviso to Art. 311(2) of the Constitution or any service rule corresponding to it. The competent authority is expected to exercise its power under this proviso after due caution and considerable application of mind. The principles to be kept in view by the competent authority while taking action under the second proviso to Art. 311(2) or corresponding service rules have been defined by the Supreme Court itself. These are reproduced in the succeeding paragraphs for the information, guidance and compliance of all concerned.

[Para 3 of the OM No. 11012/11/85-Estt.(A) dated 11.11.1985]

Action under clause (a) of the Second Proviso to Article 311(2)

6. When action is taken under clause (a) of the second proviso to Art. 311(2) of the Constitution or rule 19(i) of the CCS (CC&A) Rules, 1965 or any other service rule similar to it, the first pre-requisite is that the disciplinary authority should be aware that a government servant has been convicted on a criminal charge. But this awareness alone will not suffice. Having come to know of the conviction of a government servant on a criminal charge, the disciplinary authority must consider whether his conduct, which had led to his conviction, was such as warrants the imposition of a penalty and if so, what that penalty be. For that purpose, it will have to peruse the judgement of the criminal court and consider all the facts and circumstances of the case. In considering the matter, the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features. This, however, has to be done by the disciplinary authority by itself. Once the disciplinary authority reaches the conclusion that the government servant's conduct was blameworthy and punishable, it must decide upon the penalty that should be imposed on the government servant. This too has to be done by the disciplinary authority by itself. The principle, however, to be kept in mind is that the penalty imposed upon the civil servant should not be grossly excessive or out of all proportion to the offence committed or one not warranted by the facts and circumstances of the case.

[Para 4 of the OM No. 11012/11/85-Estt.(A) dated 11.11.1985]

7. After the competent authority passes the requisite orders as indicated in the preceding paragraph, a government servant who is aggrieved by it can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the person who was in fact, convicted, he can also agitate this question in appeal, revision or review. If he fails in all the departmental remedies available to him and still wants to pursue the matter, he can seek judicial review. The court (which term will include a Tribunal having the powers of a Court) will go into the question whether the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed, or not warranted by the facts and circumstances of the case or the requirements of the particular service to which the government servant belongs.

[Para 5 of the OM No. 11012/11/85-Estt.(A) dated 11.11.1985]

Action under clause (b) of the Second Proviso to Article 311(2)

8. Coming to clause (b) of the second proviso to Art. 311(2), there are two conditions precedent which must be satisfied before action under this clause is taken against a government servant. These conditions are:-

(i) There must exist a situation which makes the holding of an inquiry contemplated by Art. 311(2) not reasonably practicable. What is required is that holding of inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate all the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be :-

(a) where a civil servant, through or together with his associates, terrorises, threatens or intimidates witnesses who are likely to give evidence against him with fear of reprisal in order to prevent them from doing so; or

(b) where the civil servant by himself or with or through others threatens, intimidates and terrorises the officer who is the disciplinary authority or members of his family so that the officer is afraid to hold the inquiry or direct it to be held; or

(c) where an atmosphere of violence or of general indiscipline and insubordination prevails at the time the attempt to hold the inquiry is made.

The disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the civil servant is weak and is, therefore, bound to fail.

(ii) Another important condition precedent to the application of clause (b) of the second proviso to Art. 311(2), or rule 19(ii) of the CCS(CC&A) Rules, 1965 or any other similar rule is that the disciplinary authority should record in writing the reason or reasons for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Art.311(2) or corresponding provisions in the service rules. This is a constitutional obligation and, if the reasons are not recorded in writing, the order dispensing with the inquiry and the order of penalty following it would both be void and unconstitutional. It should also be kept in mind that the recording in writing of the reasons for dispensing with the inquiry must precede an order imposing the penalty. Legally speaking, the reasons for dispensing with the inquiry need not find a place in the final order itself, though they should he recorded separately in the relevant file. In spite of this legal position, it would be of advantage to incorporate briefly the reasons which led the disciplinary authority to the conclusion that it was not reasonably practicable to hold an inquiry, in the order or penalty. While the reasons so given may be brief, they should not be vague or they should not be just a repetition of the language of the relevant rules.

[Para 6 of the OM No. 11012/11/85-Estt.(A) dated 11.11.1985]

9. A question has been raised whether, in a case where Clause (b) of the second proviso to Article 311(2) of the Constitution is invoked, the disciplinary authority may dispense with the issuing of charge memo listing the charges. Clause (b) is attracted in a case where the disciplinary authority concludes, "that it is not reasonably practicable to hold such an inquiry". The circumstances leading to such a conclusion may exist either before the inquiry is commenced or may develop in the course of the inquiry. In the Tulsi Ram Patel case, the Supreme Court observed as under:-

"*It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a Government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge sheet upon the Government servant or after he has filed his written statement thereto or even after the evidence had been led in part. In such a case also, the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word "inquiry" in that clause includes part of an inquiry*."

[Para 2 of the OM No. 11012/11/85-Estt.(A) dated 04.04.1986]

10. In para 8(i) above, certain illustrative cases have been enumerated where the disciplinary authority may conclude that it is not reasonably practicable to hold the inquiry. It is important to note that the circumstances of the nature given in the illustrative cases, or other circumstances which make the disciplinary authority conclude that it is not reasonably practicable to hold the inquiry, should actually subsist at the time when the conclusion is arrived at. The threat, intimidation or the atmosphere of violence or of a general indiscipline and insubordination, for example, referred to in the illustrative cases, should be subsisting at the time when the disciplinary authority arrives at his conclusion. It will not be correct on the part of the disciplinary authority to anticipate such circumstances as those that are likely to arise, possibly later in time, as grounds for holding that it is not reasonably practicable to hold the inquiry and, on that basis, dispense with serving a charge sheet on the Government servant.

[Para 4 of the OM No. 11012/11/85-Estt.(A) dated 04.04.1986]

11. It is true that the Art. 311 (3) of the Constitution provides that the decision of the competent authority under clause (b) of the second proviso to Art.311(2) shall be final. Consequently, the decision of the competent authority cannot be questioned in appeal, revision or review. This finality given to the decision of the competent authority is, however, not binding on a Court (or Tribunal having the powers of a Court) so far as its power of judicial review is concerned, and the court is competent to strike down the order dispensing with the inquiry as also the order imposing penalty, should such a course of action he considered necessary by the court in the circumstances of the case. All disciplinary authorities should keep this factor in mind while forming the opinion that it is not reasonably practicable to hold an inquiry.

[Para 7 of the OM No. 11012/11/85-Estt.(A) dated 11.11.1985]

12. Another important guideline with regard to this clause which needs to be kept in mind is that a civil servant who has been dismissed or removed from service or reduced in rank by applying to his case clause (b) of the second proviso to Art. 311(2) or an analogous service rule can claim in appeal or revision that an inquiry should be held with respect to the charges on which such penalty has been imposed upon him, unless a situation envisaged by the second proviso is prevailing at the hearing of the appeal or revision application. Even in such a case the hearing of the appeal or revision applicable should be postponed for a reasonable length of time for the situation to return to normal.

[Para 8 of the OM No. 11012/11/85-Estt.(A) dated 11.11.1985]

Action under clause (c) of the Second Proviso to Article 311(2)

13. As regards action under clause (c) of the second proviso to Art. 311(2) of the Constitution, what is required under this clause is the satisfaction of the President or the Governor, as the case may be, that in the interest of the security of the State, it is not expedient to hold an inquiry as contemplated by Art. 311(2). This satisfaction is of the President or the Governor as a constitutional authority arrived at with the aid and advice of his Council of Ministers. The satisfaction so reached by the President or the Governor is necessarily a subjective satisfaction. The reasons for this

satisfaction need not be recorded in the order of dismissal, removal or reduction in rank; nor can it be made public. There is no provision for departmental appeal or other departmental remedy against the satisfaction reached by the President or the Governor. If, however, the inquiry has been dispensed with by the President or the Governor and the order of penalty has been passed by disciplinary authority subordinate thereto, a departmental appeal or revision will lie. In such an appeal or revision, the civil servant can ask for an inquiry to be held into his alleged conduct, unless at the time of the hearing of the appeal or revision a situation envisaged by the second proviso to Article 311(2) is prevailing. Even in such a situation the hearing of the appeal or revision application should be postponed for a reasonable length of time for the situation to become normal. Ordinarily the satisfaction reached by the President or the Governor, would not be a matter for judicial review. However, if it is alleged that the satisfaction of the President or Governor, as the case may be, had been reached mala fide or was based on wholly extraneous or irrelevant grounds, the matter will become subject to judicial review because, in such a case, there would be no satisfaction, in law, of the President or the Governor at all. The question whether the court may compel the Government to disclose the materials to examine whether the satisfaction was arrived at mala fide or based on extraneous or irrelevant grounds, would depend upon the nature of the documents in question i.e. whether they fall within the class of privileged documents or whether in respect of them privilege has been properly claimed or not.

[Para 9 of the OM No. 11012/11/85-Estt.(A) dated 11.11.1985]

Conclusion

14. The preceding paragraphs clarify the scope of clauses (a), (b) and (c) of the second proviso to Art. 311(2) of the Constitution, Rule 19 of CCS (CCA) Rules, 1965 and other service rules similar to it, in the light of the judgements of the Supreme Court delivered on 11.07.1985 and 12.09.1985. It is, therefore, imperative that these clarifications are not lost sight of while invoking the provisions of the second proviso to Art. 311(2) or service rules based on them. Particularly, nothing should be done that would create the impression that the action taken is arbitrary or mala fide. So far as clauses (a) and (c) and service rules similar to them are concerned, there are already detailed instructions laying down the procedure for dealing with the cases falling within the purview of the aforesaid clauses and rules similar to them. As regards invoking clause (b) of the second proviso to Art. 311(2) or any similarly worded service rule, absolute care should be exercised and it should always be kept in view that action under it should not appear to be arbitrary or designed to avoid an inquiry which is quite practicable.

[Para 10 of the OM No. 11012/11/85-Estt.(A) dated 11.11.1985]

15. In case any reference to the relevant OM is required, the same may be accessed by clicking on the hyperlink of the OMs. List of the OMs mentioned in this document is as under:

(a) OM No. 11012/11/85-Estt.(A) dated 11.11.1985

(b) OM No. 11012/11/85-Estt.(A) dated 04.04.1986

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(VI) DISCIPLINARY JURISDICTION OF CAT/ELECTION COMMISSION OF INDIA

(A) Jurisdiction of CAT in the matter of disciplinary action against Government servants

Department of Personnel & Training, vide OM No. 11012/1/90-Estt.A dated 28.02.1990 and OM No. 11012/6/94-Estt.(A) dated 28.03.1994, had circulated the observation of the Hon'ble Supreme Court [*in the cases of Shri Parma Nanda Vs. State of Haryana and others (1989(2) Supreme Court Cases 177) and State Bank of India Vs. Samarendra Kishore Endow (1994(1) SLR 516)*] on the question whether the Tribunal could interfere with the penalty awarded by the competent authority on the ground that it is excessive or disproportionate to the misconduct proved. The essence of both the instructions in the matter has been summarized in the following paras for guidance and better understanding:

1. The question whether the Tribunal could interfere with the penalty awarded by the competent authority on the ground that it is excessive or disproportionate to the misconduct proved, was examined by the Supreme Court in the case of Shri Parma Nanda Vs. State of Haryana and others (1989(2) Supreme Court Cases 177) and the Court held that the Tribunal could exercise only such powers which the civil courts or the High Courts could have exercised by way of judicial review. The Supreme Court in that case further observed as under:

> "....*The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Art.309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter*."

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> "...*We may, however, carve out one exception to this proposal. There may be cases where the penalty is imposed under Clause (a) of the second proviso to Art 311(2) of the Constitution. Where the person without inquiry is dismissed, removed or reduced in rank solely on the basis of conviction by a criminal court, the Tribunal may examine the adequacy of the penalty imposed in the light of the conviction and sentence inflicted on the person. If the penalty impugned is apparently unreasonable or uncalled for, having regard to the nature of the criminal charge, the Tribunal may step in to render substantial justice. The Tribunal may remit the matter to the competent authority for reconsideration or by itself substitute one of the penalties provided under Clause (a)*."

[Para 1 of the OM No. 11012/1/90-Estt.(A) dated 28.02.1990]

2. In a Judgement of State Bank of India Vs. Samarendra Kishore Endow (1994(1) SLR 516), the Supreme Court has reiterated the above said ruling that a High Court or Tribunal has

no power to substitute its own discretion for that of the authority. The Supreme Court in that case further observed as under

> "*On the question of punishment, learned counsel for the respondent submitted that the punishment awarded is excessive and that lesser punishment would meet the ends of justice. It may be noticed that the imposition of appropriate punishment is within the discretion and judgement of the disciplinary authority. It may be open to the appellate authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. The power under 'Article 226 is one of judicial review'. It "is not an appeal from a decision, but a review of the manner in which the decision was made". In other words the power of judicial review is meant "to ensure that the individual receives fair treatment and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the Court.*"
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> xx xx xx
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> "*It would perhaps be appropriate to mention at the stage that there are certain observations in Union of India Vs. Tulsiram Patel (AIR 1985 SC 1416), which at first look appear to say that the court can interfere where the penalty imposed is "arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service." It must, however, be remembered that Tulsiram Patel dealt with cases arising under proviso (a) to Article 311(2) of the Constitution. Tulsiram Patel overruled the earlier decision of this Court in Challappan (AIR 1975 SC 2216). While holding that no notice need be given before imposing the penalty in a case dealt with under the said proviso, the Court held that if a disproportionate or harsh punishment is imposed by the disciplinary authority, it can be corrected either by the Appellate Court or by High Court. These observations are not relevant to cases of penalty imposed after regular inquiry.*"

[Para 1 and 2 of the OM No. 11012/6/94-Estt.(A) dated 28.03.1994]

3. Ministries/ Departments are requested to bring the above ruling of the Supreme Court to the notice of all concerned authorities so that the same is appropriately referred to in all those cases where the question of quantum of penalty comes up before the CAT or Supreme Court by way of SLP or otherwise.

[Para 3 of the OM No. 11012/6/94-Estt.(A) dated 28.03.1994]

(B) Disciplinary jurisdiction of Election Commission of India over Government servants deputed for election duties

Disciplinary action against officers, staff and police personnel deputed on election duties shall be governed by the principles and decisions agreed to between the Union Government and the Election Commission and as recorded by the Hon'ble Supreme Court of India in its Orders dated 21.09.2000 in Writ Petition (C) No. 606 of 1993 (Election Commission of India V/s Union of India and Ors.). The Provision related to disciplinary jurisdiction of Election Commission of India over Government servants deputed for election duties are spread in three instructions. The essence of all the instructions in the matter has been summarized in the following paras for guidance and better understanding:

1. One of the issues in Writ Petition (C) No. 606/1993 in the matter of Election Commission of India Vs. Union of India & Others was regarding jurisdiction of Election Commission of India over the Representation of the People Act, 1951 and section 13CC of the Representation of the People Act, 1950. The Supreme Court by its order dated 21.9.2000 disposed of the said petition in terms of the settlement between the Union of India and Election Commission of India. The said Terms of Settlement are as under:-

"*The disciplinary functions of the Election Commission over officers, staff and police deputed to perform election duties shall extend to –*

a) Suspending any officer/official/police personnel for insubordination or dereliction of duty;

b) Substituting any officer/official/police personnel by another such person, and returning the substituted individual to the cadre to which he belongs, with appropriate report on his conduct;

c) Making recommendations to the competent authority, for taking disciplinary action, for any act of insubordination or dereliction of duty, while on election duty. Such recommendations shall be promptly acted upon by the disciplinary authority and action taken will be communicated to the Election Commission; within a period of 6 months from the date of Election Commission's recommendation.

d) *The Government of India will advice the State Governments that they too should follow the above principles and decisions, since a large number of election officials are under their administrative control.*"

[Para 1 of the OM No. 11012/7/98-Estt.(A) dated 07.11.2000]

2. The implication of the disposal of the Writ Petition by the Supreme Court in terms of the above settlement is that the Election Commission can suspend any officer/official/police personnel working under the Central Government or Public Sector Undertaking or an autonomous body fully or substantially financed by the Government for insubordination or dereliction of duty and the Election Commission can also direct substituting any officer/official/police personnel by another person besides making recommendations to the Competent Authority for taking disciplinary action for insubordination or dereliction of duty while engaged in the preparation of electoral rolls or election duty. It is also clarified that it is not necessary to amend the service rules for exercise of powers of suspension by the Election Commission in this case since these powers are derived from the provisions of section 13CC of the Representation of the People Act, 1950 and section 28A of the Representation of the People Act, 1951 since provisions of these Act would have overriding effect over the disciplinary rules. However in case there are any conflicting provisions in an Act governing the disciplinary action, the same are required to be amended suitably in accordance with the Terms of Settlement.

[Para 2 of the OM No. 11012/7/98-Estt.(A) dated 07.11.2000]

3. The terms of settlement have to be complied with while adhering to the provisions of the relevant disciplinary rules. The recommendations of the Election Commission made to the Competent Authority for taking disciplinary action for any act of insubordination or dereliction of duty while on duty shall be promptly acted upon by the disciplinary authority and action taken should be communicated to the Election Commission within a period of six months from the date of the Election Commission's recommendations.

[Para 3 of the OM No. 11012(4)/2008-Estt.(A) dated 20.03.2008]

4. It shall be mandatory for the disciplinary authorities to consult the Election Commission if the matter is proposed to be closed only on the basis of a written explanation given by officer concerned to enable the Commission to provide necessary inputs to the disciplinary authorities before the Disciplinary Authorities take a final decision.

[Para 2 of the OM No. 11012(4)/2008-Estt.(A) dated 28.07.2008]

5. In case any reference to the relevant OM is required, the same may be accessed by clicking on the hyperlink of the OMs. List of the OMs mentioned in this document are as under:

a. OM No. 11012/1/90-Estt.(A) dated 28.02.1990
b. OM No. 11012/6/94-Estt.(A) dated 28.03.1994
c. OM No. 11012/7/98-Estt.(A) dated 07.11.2000
d. OM No. 11012(4)/2008-Estt.(A) dated 20.03.2008
e. OM No. 11012(4)/2008-Estt.(A) dated 28.07.2008

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(VII) SUSPENSION

The provisions relating to suspension are scattered across several rules such as Central Civil Services (Classification, Control and Appeal) Rules, 1965, Fundamental Rules etc. In addition, a number of executive instructions, in the form of various modes of communications such as OMs etc., covering different aspects of suspension have been issued from time to time. Now, with a view to facilitate the Ministries/Departments and other stake holders in proper implementation of these provisions, a need has been felt to consolidate these provisions and place the same in the public domain for easy access as and when required. Accordingly, the said Rules/executive instructions have been compiled as under:

(A) SUSPENSION- Suspension, though not a penalty, is to be resorted to sparingly. Whenever a Government servant is placed under suspension not only does the Government lose his services but also pays him for doing no work. It also has a stigma attached to it. Therefore, the decision to place a Government servant under suspension must be a carefully considered decision and each case would need to be considered on merits.

[Para 3 of OM No 11012/17/2013-Estt.(A) dated 02.01.2014]

(B) CIRCUMSTANCES UNDER WHICH A GOVERNMENT SERVANT MAY BE PLACED UNDER SUSPENSION

(a) where, a disciplinary proceeding against him is contemplated or is pending; or
(b) where, in the opinion of the competent authority, he has engaged himself in activities prejudicial to the interest of the security of the State;

or

(c) where, a case against him in respect of any criminal offence is under investigation, inquiry or trial.

[Rule 10(1) of the CCS (CCA) Rules, 1965]

(C) CIRCUMSTANCES UNDER WHICH A GOVERNMENT SERVANT SHALL BE DEEMED TO HAVE BEEN PLACED UNDER SUSPENSION [Deemed Suspension]

(a) If the Government servant is detained in custody, whether on a criminal charge or otherwise, for a period exceeding 48 hours;

(b) If, in the event of a conviction for an offence, Government servant is sentenced to a term of imprisonment exceeding 48 hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

EXPLANATION - The period of 48 hours referred to in clause (b) above shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

[Rule 10(2) of the CCS (CCA) Rules, 1965]

It shall be the duty of a Government servant who may be arrested for any reason to intimate the fact of his arrest and the circumstances connected therewith to his official superior promptly even though he might have subsequently been released on bail. On receipt of the information from the person concerned or from any other source the departmental authorities should decide whether the facts and circumstances leading to the arrest of the person call for his suspension. Failure on the part of the any Government servant to so inform his official superior will be regarded as suppression of material information and will render him liable to disciplinary action on this ground alone, apart from the action that may be called for on the outcome of the police case against him.

[OM No. 39/59/54-Ests.(A) dated 25.02.1955]

(c) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

[Rule 10(3) of the CCS (CCA) Rules, 1965]

(d) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case.

[Rule 10(4) of the CCS (CCA) Rules, 1965]

(e) Further inquiry contemplated in rule 10(4) of the CCS (CCA) Rules, 1965 should not be ordered except in a case when the penalty of dismissal, removal or compulsory retirement has been set aside by a Court of Law on technical grounds without going into the merits of the case or when fresh material has come to light which was not before the Court. A further inquiry into the charges which have not been examined by the Court can, however, be ordered by the departmental authorities under Rule 10(4) ibid depending on the facts and circumstances of the each case.

[***OM No. 11012/24/77-Estt.(A) dated 18.03.1978***]

(f) A question whether the order of suspension in a case covered under Rule 10 (2) of the CCS (CCA) Rules, 1965 has limited operation for the period of detention and not beyond it, was considered by the Supreme Court in the case of Union of India V/s Rajiv Kumar (2003 (5) SCALE 297). Allowing the appeals of the Union of India in this case the Supreme Court has held that the order in terms of Rule 10 (2) is not restricted in its point of duration or efficacy to actual period of detention only. It continues to be operative unless modified or revoked under Sub-Rule 5(c) as provided in Sub-Rule 5(a) of the Rule 10 of the CCS (CCA) Rules, 1965.

[***OM No. 11012/8/2003-Estt.(A) dated 23.10.2003***]

(D) CIRCUMSTANCES UNDER WHICH THE COMPETENT AUTHORITY MAY CONSIDER TO PLACE A GOVERNMENT SERVANT UNDER SUSPENSION [**FOR GUIDANCE AND SHOULD NOT BE TAKEN AS MANDATORY**].

(i) Cases where continuance in office of the Government servant will prejudice the investigation, trial or any inquiry (e.g. apprehended tampering with witnesses or documents);

(ii) Where the continuance in office of the Government servant is likely to seriously subvert discipline in the office in which the public servant is working;

(iii) Where the continuance in office of the Government servant will be against the wider public interest [other than those covered by (i) and (ii)] such as there is public scandal and it is necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals, particularly corruption;

(iv)Where allegations have been made against the Government servant and preliminary inquiry has revealed that a prima facie case is made out which would justify his prosecution or is being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.

NOTE: In the first three circumstances the disciplinary authority may exercise his discretion to place a Government servant under suspension even when the case is under investigation and before a prima facie case has been established.

(v) Suspension may be desirable in the circumstances indicated below:-

a) any offence or conduct involving moral turpitude;

b) corruption, embezzlement or misappropriation of Government money, possession of disproportionate assets, misuse of official powers for personal gain;

c) serious negligence and dereliction of duty resulting in considerable loss to Government;

d) desertion of duty;

e) refusal or deliberate failure to carry out written orders of superior officers.

Note: In respect of the types of misdemeanor specified in sub clauses (c) and (e) discretion has to be exercised with care.

[***Para 4 of the OM No. 11012/17/2013-Estt.(A) dated 02.01.2014***]

(E) SUSPENSION OF GOVERNMENT SERVANTS INVOLVED IN CASES OF DOWRY DEATHS.

If a case has been registered by the Police against a Government servant under Section 304-B of the IPC [**Dowry death**], he shall be placed under suspension in the following circumstances by the competent authority by invoking the provisions of Sub-rule (1) of the Rule 10 of the CCS (CCA) Rules, 1965-

(i) If the Government servant is arrested in connection with the registration of the police case, he shall be placed under suspension immediately irrespective of the period of his detention.

(ii) If he is not arrested, he shall be placedunder suspension immediately on submission of the police report under sub-section (2) of section 173 of the Code of Criminal Procedure, 1973, to the Magistrate, if the report prime-facie indicates that the offence has been committed by the Government servant.

[***OM No. 11012/8/87-Ests.(A) dated 22.06.1987***]

(F) COMPETENT AUTHORITY

Ø **AUTHORITY COMPETENT TO PLACE A GOVERNMENT SERVANT UNDER SUSPENSION**

(i) Appointing Authority, or
(ii) Any authority to which Appointing Authority is subordinate, or
(iii) Disciplinary Authority, or
(iv) Any other authority empowered in that behalf by the President, by general or special order.

Provided that, except in case of an order of suspension made by the Comptroller and Auditor – General in regard to a member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant General or equivalent (other than a regular member of the Indian Audit and Accounts Service), where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

[*Rule 10(1) of CCS (CCA) Rules, 1965*]

Ø Supervisory Officers in field offices located outside the Headquarters may, wherever necessary, be empowered to place officers subordinate to them under suspension, subject

to the conditions mentioned below, by issuing special order in the name of President in pursuance of Rule 10 of the CCS (CCA) Rules, 1965:

> *Only Supervisory officers in offices located away from headquarters need be specially empowered to suspend a subordinate officer in case involving gross dereliction of duties. In order to prevent abuse of this power the suspending authority should be required to report the facts of each case immediately to the next higher authority, and all such orders of suspension should become ab initio void unless confirmed by the reviewing authority within a period of one month from the date of orders.*

[***OM No. 7/4/74-Ests.(A) dated 9.08.1974***]

Ø **AUTHORITY COMPETENT TO ISSUE ORDER REGARDING DEEMED SUSPENSION-**

Appointing Authority

[*Rule 10(2) of CCS (CCA) Rules, 1965*]

(G)TIME LINE FOR COMMUNICATING THE REASONS FOR SUSPENSION-

Reasons for Suspension, if not indicated in the suspension order itself, should be communicated within three months.

[Para 5 of OM No. 11012/17/2013-Estt.A dated 02.01.2014]

(H)REVIEW OF SUSPENSION

(i) An order of suspension made or deemed to have been made may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

[***Rule 10(5) (c) of CCS(CCA) Rules, 1965***]

(ii) An order of suspension made or deemed to have been made shall be reviewed by the authority competent to modify or revoke the suspension, before expiry of 90 days from the effective date of suspension, on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding 180 days at a time.

(iii) An order of suspension made or deemed to have been made shall not be valid after a period of 90 days unless it is extended after review, for a further period before the expiry of 90 days.

Provided that no such review of suspension shall be necessary in the case of deemed suspension, if the Government servant continues to be under detention and in such case

the ninety days' period shall be computed from the date the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later:

Provided further that in a case where no charge sheet is issued under these rules, the total period under suspension or deemed suspension, as the case may be, including any extended period in terms of sub-rule (6) shall not exceed,–

(a) two hundred seventy days from the date of order of suspension, if the Government servant is placed under suspension in terms of clause (a) of sub-rule (1); or

(b) two years from the date of order of suspension, if the Government servant is placed under suspension in terms of clause (aa) or clause (b) of sub-rule (1) as the case may be; or

(c) two years from the date the Government servant detained in custody is released or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later, in the case of deemed suspension under sub-rule (2).

[Rule 10(6) & (7) of CCS(CCA) Rules, 1965]

[Notification No. GSR 156 dated 19.10.2022]

(iv) In cases of prolonged suspension period, the courts have pointed out that the suspension cannot be continued for long and that inspite of the instructions of DOP&T, the Disciplinary Authorities are not finalizing the disciplinary proceedings within the stipulated time. Also, in such cases the Government is unnecessarily paying subsistence allowance without extracting any work and if, on the culmination of the disciplinary proceedings, the charged officer is exonerated from the charges, the Government has to unnecessarily pay the full salary and treat the period of suspension as on duty etc. It is, therefore, desirable that timely review of suspension is conducted in a just and proper manner and that the disciplinary proceedings are finalized expeditiously.

[OM No. 11012/17/2013-Estt.A-III dated 18.11.2014]

(I) REVIEW COMMITTEE

(i) An order of suspension made or deemed to have been made under this Rule shall be reviewed by the competent authority on recommendation of the Review Committee constituted for the purpose.

(ii) **Composition of Review Committee:**

(a) The disciplinary authority, the appellate authority and another officer of the level of disciplinary/appellate authority from the same office or from another Central Government office (in case another officer of same level is not available in the same office), in a case where the President is not the disciplinary authority or the appellate authority.

(b) The disciplinary authority and two officers of the level of Secretary/Addl. Secretary/Joint Secretary who are equivalent or higher in rank than the disciplinary authority from the same office or from another Central Government office (in case another officer of same level is not available in the same office), in a case where the appellate authority is the President.

(c) Three officers of the level of Secretary/Addl. Secretary/Joint Secretary who are higher in rank than the suspended official from the same Department/Office or from another Central Government Department/Office (in case another officer of same level is not available in the same office), in a case where the disciplinary authority is the President.

The administrative ministry/department/office concerned may constitute the review committees as indicated above on a permanent basis or ad-hoc basis.

(iii) The Review Committee(s) may take a view regarding revocation/continuation of the suspension keeping in view the facts and circumstances of the case and also taking into account that unduly long suspension, while putting the employee concerned to undue hardship, involve payment of subsistence allowance without the employee performing any useful service to the Government. Without prejudice to the foregoing, if the officer has been under suspension for one year without any charges being filed in a court of law or no charge-memo has been issued in a departmental enquiry, he shall ordinarily be reinstated in service without prejudice to the case against him. However, in case the officer is in police/judicial custody or is accused of a serious crime or a matter involving national security, the Review Committee may recommend the continuation of the suspension of the official concerned.

[OM No. 11012/4/2003-Estt.(A) dated 07.01.2004]

) PAY AND ALLOWANCES DURING THE SUSPENSION PERIOD

SUBSISTENCE ALLOWANCE

A Government servant under suspension is not paid any pay but is allowed a Subsistence Allowance at an amount equivalent to the leave salary which the Government servant would have drawn if he had been on leave on half average pay or half pay and in addition dearness allowance, if admissible on the basis ofsuch leave salary.

Where the period of suspension exceeds 3 months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first three months as follows:

(i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50% of the subsistence allowance admissible during the period of the first 3 months, if in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant;

(ii) the amount of subsistence allowance, may be reduced by a suitable amount, not exceeding 50% of the subsistence allowance admissible during the period of first 3 months, if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the Government servant;

(iii) the rate of dearness allowance will be based on the increased or, as the case may be, the decreased amount of subsistence allowance admissible under sub-clauses (i) and (ii) above.

[FR 53 (1)(ii)(a)]

ANY OTHER COMPENSATORY ALLOWANCES

A Government servant under suspension is also entitled for:

Any other compensatory allowances admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension subject to the fulfillment of other conditions laid down for the drawal of such allowances.

[FR 53 (1)(ii)(b)]

No payment shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation.

[FR 53 (2)]

❖ **Recoveries from subsistence allowance-**

Compulsory Deductions to be enforced	**Deductions at the option of the suspended officer**	**Deduction NOT to be made**
(i) Income Tax (ii) House Rent (Licence Fee) and allied charges (iii) Repayment of loans and advances taken from Government – rate of recovery to be determined by Head of Department (iv) CGHS contribution (v) CGEGIS subscription	(i) PLI premia (ii) Amounts due to Co-op stores/ Societies (iii) Refund of GPF advance	(i) GPF subscription (ii) Amounts due to court attachments (iii) Recovery of loss to Government

[Para 14 of the OM No. 11012/17/2013-Estt.(A) dated 2.01.2014]

(K) PROMOTION DURING THE SUSPENSION

Officer under suspension shall be considered by the DPC along with others. However, the recommendations in respect of those under suspension shall be placed in a sealed cover. The sealed cover shall be opened/ not opened (i.e. recommendation contained in the sealed cover shall not be acted upon) depending on the outcome of the disciplinary/ criminal proceedings.

If an officer is suspended subsequent to the meeting of the DPC but before he is actually promoted, then the recommendations would be deemed to have been placed in the sealed cover.

[OM No. 22011/4/91-Estt(A) dated 14.09.1992] &
[Para 11 of the OM No. OM No. 11012/17/2013-Estt.(A) dated 02.01.2014]

(L) WRITING OF ACR/APAR BY OFFICERS UNDER SUSPENSION

If the reporting/ reviewing officer is under suspension when the Confidential Report has become due to be written/ reviewed, it may be got written/ reviewed by the officer concerned within two months from the date of his having been placed under suspension or within one month from the date on which the report was due, whichever is later. An officer under suspension shall not be asked to write/ review Confidential Reports after the time limit specified above.

[OM No. 21011/2/78-Estt.(A) dated 01.08.1978]

No officer under suspension should be allowed to write/ review the ACRs of his subordinates if during major part of writing/ reviewing he is under suspension as he might not have full opportunity to supervise the work of his subordinate.

[*OM No. 21011/8/2000-Estt.(A) dated 25.10.2000*]

(M) LTC DURING THE SUSPENSION

A Government servant under suspension cannot avail of LTC as he cannot get any leave including casual leave during the period of suspension. As he continues to be in service during the period of suspension, members of his family are entitled to LTC.

[Para 12 of the OM No. OM No. 11012/17/2013-Estt.(A) dated 02.01.2014]

(N) LEAVE DURING THE SUSPENSION

Leave may not be granted to a Government servant under suspension.

[FR-55]

(O) HEADQUARTERS DURING THE SUSPENSION

An officer under suspension is regarded as subject to all other conditions of service applicable generally to Government servants and cannot leave the station without prior permission. As such, the headquarters of a Government servant should normally be assumed to be his last place of duty. The order placing an officer under suspension should clearly indicate what his headquarters would be.

However, where an individual under suspension requests for a change of headquarters, there is no objection to a competent authority changing the headquarters if it is satisfied that such a course will not put Government to any extra expenditure like grant of T.A. etc. or other complications.

[Para 10 of the OM No. OM No. 11012/17/2013-Estt.(A) dated 02.01.2014]

(P) WITHHOLDING OF VIGILANCE CLEARANCE DURING THE SUSPENSION

Purpose	Instructions/ Guidelines
Promotion	OM No. 22034/4/2012-Estt(D) dated 02.11.2012
(i) Empanelment (ii) Any deputation for which clearance is necessary (iii) Appointment to sensitive posts	OM No. 11012/11/2007-Estt.(A) dated 14.12.2007, as amended from time to time.

(iv) Assignments to training programme (except mandatory training)	
Obtaining Passport	OM No. 11012/7/2017-Estt.A-III dated 18.02.2020
Private Visit to abroad	OM No. 11013/8/2015-Estt.A-III dated 27.07.2015

(Q) FORWARDING OF APPLICATIONS DURING THE SUSPENSION

Application of a Government servant for appointment, whether by Direct Recruitment, transfer on deputation or transfer, to any other post should not be considered/ forwarded if he is under suspension.

[Para 15 of the OM No. 11012/17/2013-Estt.(A) dated 02.01.2014]

(R) ACCEPTANCE OF RESIGNATION OF A SUSPENDED OFFICER

Where a Government servant who is under suspension submits his resignation, the competer authority should examine, with reference to the merit of the disciplinary case pending agains the Government servant, whether it would be in the public interest to accept the resignatior Normally, as officers are placed under suspension only in cases of grave delinquency, it woul not be correct to accept the resignation from an officer under suspension. Exceptions to th rule would be where the alleged offence does not involve moral turpitude or where the evidenc against the officer is not strong enough to justify the assumption that departmenta proceedings, if continued would result in removal from service/dismissal, or where th departmental proceedings are like to be so protracted that it would be cheaper for th exchequer to accept the resignation.

[OM No. 28034/4/94-Estt.(A) daed 31.05.1994] or
[Para No. 16(c) of the OM No. *11012/17/2013-Estt.(A) dated 02.01.2014*]

(S) RETIREMENT DURING THE SUSPENSION

❖ A Government servant who retires while under suspension is entitled to provisional pensio equal to the maximum pension on the basis of qualifying service upto the date immediate preceding the date on which he was placed under suspension.

[Rule 8(4)(a) of the CCS (Pension) Rules, 2021

(T) COUNTING OF PERIODS OF SUSPENSION AS QUALIFYING SERVICE FOR THE PURPOSE OF PENSION:

"*Counting of periods of Suspension-*

(1) Time passed by a Government servant under suspension pending inquiry into conduct shall be counted as qualifying service where, on conclusion of such inquiry, he has been fully exonerated or only a minor penalty is imposed and the suspension is held to be wholly unjustified.

(2) In cases not covered under sub-rule (1), the period of suspension shall not count unless the authority competent to pass orders under the rule governing such cases expressly declares at the time that it shall count to such extent as the Competent Authority may declare.

(3) *In all cases of suspension, the competent authority shall pass an order specifying the extent to which, if any, the period of suspension shall count as qualifying service and*

a definite entry shall be made in the service book of the Government servant in this regard."

[Rule 23 of the CCS (Pension) Rules, 2021]

(U) ACCEPTANCE OF VRS (VOLUNTARY RETIREMENT SCHEME] APPLICATION OF A SUSPENDED OFFICER.

It shall be open to the Appropriate Authority to withhold permission to a Government Servant under suspension who seeks to retire under FR 56(k) or FR-56(m) or Rule 43 (3) of CCS (Pension) Rule 2021.

[FR-56(k) and FR-56(m)]
[Rule 43(3) of the CCS (Pension) Rules, 2021]

(V) PAY AND ALLOWANCE AFTER REVOCATION/ REINSTATEMENT FROM SUSPENSION

When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty"

[FR-54(B)(1)]

(W) ON CONCLUSION OF PROCEEDINGS

❖ **If Exonerated**

a) where the Competent Authority is of the opinion that the suspension was whol unjustified, the Government servant may be paid full pay and allowances.

b) Where the Competent Authority is of the opinion that the proceedings were delayed fo reasons directly attributable to the Government servant,it may after notice to th Government servant and considering the representation-if any, order a reduced amount t be paid.

c) The period of suspension will be treated as period spent on duty for all purposes.

[FR 54-B (3) & (4)

❖ **Minor Penalty is imposed**

Where the proceedings result only in minor penalty being imposed, then the suspension treated as wholly unjustified and the employee concerned may be paid full pay an allowances for the period of suspension by passing a suitable order under FR 54-B.

[O.M. No.11012/15/85-Estt.(A) dt. 03.12.198

❖ **Other than exoneration/ minor penalty**

(a) The competent authority shall determine the amount to be paid, after notice t Government servant and considering his representation, if any.

[FR 54-B(5)

(b) The period of suspension shall not be treated as duty unless the competent authorit specifically directs that it shall be so treated for any specified purpose.

(c) If the Government servant so desires, the period of suspension may be converted int leave of the kind due and admissible. (Note: Such leave can be in excess of 3 month in case of temporary Government servants or 5 years in case of permaner Government servants)

[FR 54-B(7)

NOTE: As per FR 54-B(9) wherever the amount allowed is less than full pay and allowances it shall not be less than the Subsistence Allowance already paid.

(X)DEATH WHILE UNDER SUSPENSION

Where a Govt servant under suspension dies before the disciplinary proceedings or the court proceedings against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances to which he would have been entitled had he not been suspended, for that period subject to adjustment of subsistence allowance already paid.

[FR 54-B(2)]

(Y) SERVING OF CHARGE SHEET ETC.

a) Suspension order should normally indicate the grounds for suspension.
b) Where the suspension is on grounds of contemplated proceedings, charge sheet should be served upon the Government servant within 3 months
c) Where charge sheet is not served within 3 months, the reasons for suspension should be communicated to the Government servant immediately on expiry of 3 months from the date of suspension.

[DoPT O.M. No.35014/1/81-Estt.(A) dated 9th November, 1982]

(Z) APPEAL

Order of Suspension is appealable under Rule 23 (i) of CCS (CCA) Rules, 1965.

Note: List of the OMs mentioned in this document is annexed. In case any reference to the relevant OM is required, the same may be accessed by clicking on the hyperlink or from the DOPT's website.

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Other Reference OMs
1. OM No: No. 39/59/54-Ests - A Dated: 25/2/1955
2. OM No: No.39/5/56-Estt(A) Dated: 8/9/1956
3. OM No: No. 7/4/74-Ests A Dated: 9/8/1974
4. OM No: No. 11012/24/77-Estt (A) Dated: 18/3/1978
5. OM No: No. 21011/2/78-Estt-A Dated: 1/8/1978
6. OM No: No. 35014/1/81-Estt.(A) Dated: 9/11/1982

7. OM No: No. 11012/15/85-Estt.(A) Dated: 3/12/1985
8. OM No: No. 11012/8/87-Ests. (A) Dated: 22/6/1987
9. OM No: No. 28034/25/87-Estt. (A) Dated: 11/2/1988
10. OM No: No. 22011/4/91-Estt(A) Dated: 14/9/1992
11. OM No: No.28034/4/94-Estt(A) Dated: 31/5/1994
12. OM No: No. 21011/8/2000-Estt(A) Dated: 25/10/2000
13. OM No: No. 11012/8/2003-Estt. (A) Dated: 23/10/2003
14. OM No: No. 11012/4/2003-Estt. (A) Dated: 7/1/2004
15. OM No: No. 11012/4/2003-Estt. (A) Dated: 19/3/2004
16. OM No: No. 11012/11/2007- Estt(A) Dated: 14/12/2007
17. OM No: No. 22034/4/2012-Estt(D) Dated: 2/11/2012
18. OM No: No. 11012/17/2013-Estt. (A) Dated: 2/1/2014
19. OM No: No. 25013/3/2010-Estt.(A-IV) Dated: 17/1/2014
20. OM No: No. 11012/17/2013-Estt.A-III Dated: 18/11/2014
21. OM No: No. 11012/17/2013-Estt.(A) Dated: 3/7/2015
22. OM No: No. 11013/8/2015-Estt.A-III Dated: 27/7/2015
23. OM No: No. 11012/04/2016-Estt.(A) Dated: 23/8/2016
24. OM No: No. 11012/7/2017-Estt.A-III Dated: 18/2/2020
25. OM No: No. 11012/04/2016-Estt. A-III Dated: 19/10/2022

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(VIII) SEALED COVER PROCEDURE

Department of Personnel & Training has issued various instructions on sealed-cover procedure and its implications on the Government servants at the time of promotion.The procedure to be followed in this regard by the authorities concerned is summarized in the following paras forguidance and better understanding: -

Government Servants to whom Sealed Cover Procedure is applicable

2. At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee: -

(i) Government servants under suspension;
(ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
(iii) Government servants in respect of whom prosecution for a criminal charge is pending.

For the purpose of pendency of prosecution for a criminal charge, the definition of pendency of judicial proceedings in criminal cases given in Rule 9 (6)(b)(i) of CCS (Pension) Rules, 1972 [*Now Explanation 1(b)((i) under Rule 8 of CCS (Pension) Rules, 2021*] is adopted. The Rule 9 (6)(b)(i) of CCS (Pension) Rules, 1972 [*Now Explanation 1(b)(i) under Rule 8 of CCS (Pension) Rules, 2021*] provides as under:-

"(b) judicial proceedings shall be deemed to be instituted –
(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made"
[Para 2 of OM No. 22011/4/91-Estt.(A) dated 14.09.1992; and

Para 8 of OM No. 22034/4/2012-Estt.(D) dated 02.11.2012]

2.1 A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arises after the recommendations of the DPC are received but before he is actually promoted, the recommendations of DPC will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him.

[Para 7 of OM No. 22011/4/91-Estt.(A) dated 14.09.1992]

2.2 It is stated that para 2.1 above will not be applicable if by the time the seal was opened to give effect to the exoneration in the first enquiry, another departmental inquiry was started by the department against the Government servant concerned. This means that where the second or subsequent departmental proceedings were instituted after promotion of the junior to the Government servant concerned on the basis of the recommendation made by the DPC which kept the recommendation in respect of the Government servant in sealed cover, the benefit of the assessment by the first DPC will be admissible to the Government servant on exoneration in the first inquiry, with effect from the date his immediate junior was promoted.

[Para 3 of OM No. 22011/2/2002-Estt.(A) dated 24.02.2003]

2.3 In the case of review DPC, where a junior has been promoted on the recommendations of original DPC, the official would be considered for promotion if he/she is clear from vigilance angle on the date of promotion of the junior, even if the circumstances of para 2 above get attracted on the date of actual promotion. Further, in case where the junior is not promoted, it is to be ensured that the provisions of para 2.1 above are not attracted on the date the official is being actually promoted.

[Para 3 of OM No.22034/4/2012-Estt.(D-II) dated 23.01.2014]

Procedure to be followed by DPC in respect of Government Servants under cloud

3. The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC, including 'Unfit for Promotion', and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed 'Findings regarding suitability for promotion to the grade/post of ……..in respect of Shri ……..(name of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri……. The proceedings of the DPC need only contain the note 'The findings are contained in the attached sealed cover'. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept ina sealed cover.

[Para 2.1 of OM No. 22011/4/91-Estt.(A) dated 14.09.1992]

3.1 The same procedure outlined in para 3 above will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded.

[Para 2.2 of OM No. 22011/4/91-Estt.(A) dated 14.09.1992]

Six monthly review of "Sealed Cover" cases

4. It is necessary to ensure that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and all efforts to finalize expeditiously the proceedings should be taken so that the need for keeping the case of a Government servant in a sealed cover is limited to the barest minimum. It has, therefore, been decided that the appointing authorities concerned should review comprehensively the cases of Government servants, whose suitability for promotion to a higher grade has been kept in a sealed cover on the expiry of 6 months from the date of convening the first Departmental Promotion Committee which had adjudged his suitability and kept its findings in the sealed cover. Such a review should be done subsequently also every six months. The review should, inter alia, cover the progress made in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite their completion.

[Para 4 of OM No. 22011/4/91-Estt.(A) dated 14.09.1992]

Procedure for Ad-hoc promotion of "Sealed Cover" cases

5. In spite of the six-monthly review referred to in para 4 above, there may be some cases where the disciplinary case/criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Government servant in a sealed cover. In such a situation, the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of giving him ad-hoc promotion keeping in view the following aspects:-

(a) Whether the promotion of the officer will be against public interest;
(b) Whether the charges are grave enough to warrant continued denial of promotion;
(c) Whether there is any likelihood of the case coming to a conclusion in the near future;
(d) Whether the delay in the finalization of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and
(e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after ad-hoc promotion, which may adversely affect the conduct to the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.

[Para 5 of OM No. 22011/4/91-Estt.(A) dated 14.09.1992]

5.1 In case the appointing authority comes to a conclusion that it would not be against the public interest to allow ad-hoc promotion to the Government servant, his case should be placed before the next DPC held in the normal course after the expiry of the two year period to decide whether the officer is suitable for promotion on ad-hoc basis. Where the Government servant is considered for ad-hoc promotion, the Departmental Promotion Committee should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution against him.

[Para 5.1 of OM No. 22011/4/91-Estt.(A) dated 14.09.1992]

5.2 After a decision is taken to promote a Government servant on an ad-hoc basis, an order of promotion may be issued making it clear in the order itself that:-

(i) the promotion is being made on purely ad-hoc basis and the ad-hoc promotion will not confer any right for regular promotion; and

(ii) the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserves the right to cancel the ad-hoc promotion and revert the Government servant,at any time,to the post from which he was promoted.

[Para 5.2 of OM No. 22011/4/91-Estt.(A) dated 14.09.1992]

5.3 If the Government servant concerned is acquitted in the criminal prosecution on the merits of the case or is fully exonerated in the departmental proceedings, the ad-hoc promotion already made may be confirmed and the promotion treated as a regular one from the date of the ad-hoc promotion with all attendant benefits. In case the Government servant could have normally got his regular promotion from a date prior to the date of his ad-hoc promotion with reference to his placement in the DPC proceedings kept in the sealed cover(s) and the actual date of promotion of the person ranked immediately junior to him by the same DPC, he would also be allowed his due seniority and benefit of notional promotion as envisaged in para 6.

[Para 5.3 of OM No. 22011/4/91-Estt.(A) dated 14.09.1992]

5.4 If the Government servant is not acquitted on merits in the criminal prosecution but purely on technical grounds and Government either proposes to take up the matter to a higher court or to proceed against him departmentally or if the Government servant is not exonerated in the departmental proceedings, the ad-hoc promotion granted to him should be brought to an end.

[Para 5.4 of OM No. 22011/4/91-Estt.(A) dated 14.09.1992]

Action after completion of Disciplinary Case/ Criminal Prosecution

6. On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Government servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior-most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for

example delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. These are only some of the circumstances where such denial can be justified.

[Para 3 of OM No. 22011/4/91-Estt.(A) dated 14.09.1992]

6.1 Promotion of the Government servant exonerated after retirement:

(a) The applicability of the para 6 above in so far as it relates to cases where the Government servant, who has retired by the time he is exonerated of all the charges has been considered in respect of the following cases:

(i) Where the promotion order pertaining to the relevant DPC has been issued and the officers empanelled have assumed charge prior to the date of superannuation of the retired Government Servant; and

(ii) The retired Government Servant would have been in service and assumed charge of the post had the disciplinary proceeding not been initiated against him/ her.

(b) In such cases, notional promotion and payment of arrears of pay, if any, for the period of notional promotion till the date of retirement, to such a retired Government servant if found fit on opening of the sealed cover is to be decided by the appointing authority in terms of Para 6 above.

(c) A retired Government employee who is considered for notional promotion from the date of promotion of his next junior after opening of the sealed cover would also be entitled to fixation of pension on the basis of such notional pay on his notional promotion.

[Para 3 to 5 of OM No. 22011/3/2013-Estt.(D) dated 25.01.2016]

6.2 In case the subsequent proceedings (commenced after the promotion of the junior) results in the imposition of any penalty before the exoneration in the first proceedings based on which the recommendations of the DPC were kept in sealed cover and the Government servant concerned is promoted retrospectively on the basis of exoneration in the first proceedings, the penalty imposed may be modified and effected with reference to the promoted post. An indication to this effect may be made in the promotion order itself so that there is no ambiguity in the matter.

[Para 4 of OM No. 22011/2/2002-Estt.(A) dated 24.02.2003]

6.3 In case where the Government servant is acquitted by trial court but an appeal against the judgment is either contemplated or has been filed,the following action is to be taken :-

(i) Where the recommendation of DPC has been kept in sealed cover solely on account of pendency of the criminal case, the sealed cover may be opened in case of acquittal of the Government servant provided it has not been stayed by a superior court.

(ii) In the order of promotion, a mention may however be made that the promotion is provisional subject to the outcome of appeal that may be filed against the acquittal of the Government servant. The promotion will be without prejudice to the action that

may be taken if the judgment of the trial court acquitting the Government servant is set-aside.

(iii) In case, the Government servant stands convicted on appeal, the following action will be taken:

a) The provisional promotion shall be deemed non est, and the Government servant shall stand reverted;
b) In case of the Government servant being sentenced to imprisonment exceeding 48 hours, he will be deemed to be under suspension in terms of rule 10(2)(b) of the CCS (CCA) Rules, 1965 from the date of conviction;
c) Action under Rule 19(i) of the CCS(CCA), Rules, 1965, shall be taken.

[OM No. 11012/6/2016-Estt.(A-III) dated 19.01.2017]

6.4 If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

[Para 3.1 of OM No. 22011/4/91-Estt.(A) dated 14.09.1992]

6.5 In a case where disciplinary proceedings have been held under the relevant disciplinary rules, 'warning' should not be issued as a result of such proceedings. If it is found, as a result of the proceedings, that some blame attaches to the Government servant at least the penalty of 'censure' should be imposed.

[Para 3.2 of OM No. 22011/4/91-Estt.(A) dated 14.09.1992]

Sealed Cover Procedure for confirmation

7. The procedure outlined in the preceding paras should also be followed in considering the claim for confirmation of an officer under suspension, etc. A permanent vacancy should be reserved for such an officer when his case is placed in sealed cover by the DPC.

[Para 6 of OM No. 22011/4/91-Estt.(A) dated 14.09.1992]

8. In case any reference to the relevant OM is required, the same may be accessed by clicking on the hyperlink or from the DOPT's website

Other Reference OMs

1. OM No: No. 22011/4/91-Estt(A) Dated: 14/9/1992
2. OM No: No. 22011/1/99-Estt. (A) Dated: 25/2/1999
3. OM No: No.22011/2/2002-Estt(A) Dated: 24/2/2003
4. OM No: No. 22034/4/2012-Estt(D) Dated: 2/11/2012
5. OM No: No. 22034/4/2012-Estt.(D-II) Dated: 23/1/2014
6. OM No: No. 22011/3/2013-Estt. (D) Dated: 25/1/2016

7. OM No: No. 11012/6/2016-Estt.A-III Dated: 19/1/2017

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(IX) GRANT OF VIGILANCE CLEARANCE FOR OBTAINING PASSPORT

In supersession of the OM No. 11012/7/2017-Estt.A-III dated 28.03.2018, Department of Personnel & Training, vide OM No. 11012/7/2017-Estt.A-III dated 18.02.2020, has issued guidelines on grant of vigilance clearance for obtaining passport.

2. Guidelines for issuance of ordinary Passport to the Government servants vide O.M. No. VI/401/01/05/2014 dated 26.05.2015, wherein procedures to be followed in this regard have also been prescribed by Ministry of External Affairs.

3. In view of the above, it is mandatory for the administrative Department/ Controlling Authority to check as to whether any provision of the Section 6(2) of the Passport Act, 1967 is attracted in case of employees, who are working under them, while obtaining Indian Passport. As such, it is required to check the vigilance clearance of such Government servants.

4. Accordingly, it has been decided that vigilance clearance can be withheld only under the following circumstances:

(i) The officer is under suspension;

(ii) Charge sheet has been filed in a Court by the Investigating Agency in a criminal case or after grant of sanction by the Competent Authority under PC Act or any other criminal matter and taken cognizance of by the Court of Law.

[OM No. 11012/7/2017-Estt.A-III dated 18.02.2020]

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