<<<< CCS (CCA) RULES, 1965 >>>>

CENTRAL CIVIL SERVICES

(CLASSIFICATION, CONTROL & APPEAL) RULES, 1965

In exercise of the powers conferred by proviso to Article 309 and Clause (5) of Article 148 of the Constitution and after consultation with the Comptroller and Auditor-General in relation to persons serving in the Indian Audit and Accounts Department, the President he reby makes the following rules, namely :-

PART I

GENERAL

1. Short title and commencement

(1) **These Rules may be called the Central Civil Services (Classification, Control and Appeal) Rules, 1965.**

(2) **They shall come into force on the 1st December, 1965.**

2. Interpretation

In these rules, unless the context otherwise requires, -

(a) **"appointing authority", in relation to a Government servant, means -**

(i) **the authority empowered to make appointments to the Service of which the Government servant is for the time being a member or to the grade of the Service in which the Government servant is for the time being included, or**

(ii) **the authority empowered to make appointments to the post which the Government servant for the time being holds, or**

(iii) **the authority which appointed the Government servant to such Service, grade or post, as the case may be, or**

(iv) **where the Government servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employment of the Government, the authority which appointed him to that Service or to any grade in that Service or to that post,**

whichever authority is the highest authority;

(b) **"cadre authority", in relation to a Service, has the same meaning as in the rules regulating that Service;**

(c) **"Central Civil Service and Central Civil post" includes a civilian Service or civilian post, as the case may be, of the corresponding Group in the Defence Services;**

(d) **"Commission" means the Union Public Service Commission;**

(e) **"Defence Services" means services under the Government of India in the Ministry of Defence, paid out of the Defence Services Estimates, and not subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950);**

(f) **"Department of the Government of India" means any establishment or organization declared by the President by a notification in the Official Gazette to be a department of the Government of India;**

(g) **"disciplinary authority" means the authority competent under these rules to impose on a Government servant any of the penalties specified in Rule 11;**

(h) **"Government servant' means a person who -**

(i) **is a member of a Service or holds a civil post under the Union, and includes any such person on foreign service or whose services are temporarily placed at the disposal of a State Government, or a local or other authority;**

ii) **is a member of a Service or holds a civil post under a State Government and whose services are temporarily placed at the disposal of the Central Government;**

iii) **is in the service of a local or other authority and whose services are temporarily placed at the disposal of the Central Government;**

(i) **" head of the department" for the purpose of exercising the powers as appointing, disciplinary, appellate or reviewing authority, means the authority declared to be the head of the department under the Fundamental and Supplementary Rules or the Civil Service Regulations, as the case may be;**

(j) **"head of the office" for the purpose of exercising the powers as appointing, disciplinary, appellate or reviewing authority, means the authority declared to be the head of the office under the General Financial Rules;**

(k) **"Schedule" means the Schedule to these rules;**

(l) **"Secretary" means the Secretary to the Government of India in any Ministry or Department, and includes-**

(i) **a Special Secretary or an Additional Secretary,**

(ii) **a Joint Secretary placed in independent charge of a Ministry or Department,**

(iii) **in relation to the Cabinet Secretariat, the Secretary to the Cabinet,**

(iv) **in relation to the President's Secretariat, the Secretary to the President, or as the case may be, the Military Secretary to the President,**

(v) **in relation to Prime Minister's Secretariat, the Secretary to the Prime Minister, and**

(vi) **in relation to the Planning Commission, the Secretary or the Additional Secretary to the Planning Commission;**

(m) **"Service" means a civil service of the Union.**

3. Application

(1) **These rules shall apply to every Government servant including every civilian Government servant in the Defence Services, but shall not apply to -**

(a) any railway servant, as defined in Rule 102 of Volume I of the Indian Railways Establishment Code,

(b) any member of the All India Services,

(c) any person in casual employment,

(d) any person subject to discharge from service on less than one month's notice,

(e) any person for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions.

(2) Notwithstanding anything contained in sub-rule (1), the President may by order exclude any Group of Government servants from the operation of all or any of these rules.

(3) Notwithstanding anything contained in sub-rule (1), or the Indian Railways Establishment Code, these rules shall apply to every Government servant temporarily transferred to a Service or post coming within Exception (a) or (e) in sub-rule (1), to whom, but for such transfer, these rules would apply.

(4) If any doubt arises, -

(a) whether these rules or any of them apply to any person, or

(b) whether any person to whom these rules apply belongs a particular Service,

the matter shall be referred to the President who shall decide the same.

Government of India's decisions :

(1) Persons to whom not applicable –

In exercise of the powers conferred by sub-rule (2) of rule 3 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 (now 1965), the President hereby directs that the following classes of Government servants shall be wholly excluded from the operation of the said rules, namely :-

MINISTRY OF EXTERNAL AFFAIRS

Locally recruited staff in Missions abroad.

MINSITRY OF COMMUNICATIONS

(Posts and Telegraphs Department)

(i) Extra-Departmental Agents

(ii) Monthly-rated staff paid from contingencies other than those brought on to regular establishment.

(iii) Monthly-rated work-charged and other employees not on regular establishment.

(iv) Daily-rated staff paid from contingencies.

(v) Daily-rated workmen paid by the day, week, month, etc.

(vi) All hot weather and monsoon establishment.

(vii) Non-departmental telegraphic and telephone operators.

[M.H.A. Notification No. S.R.O. 609, dated the 28th February, 1957].

MINISTRY OF HOME AFFAIRS

Police Officers up to the rank of Inspector of Police in Delhi Special Police Establishment.

[M.H.A., Notification No. F.7/24/61-Ests. (A), dated the 15th December, 1961].

MINISTRY OF URBAN DEVELOPMENT

The President's Garden Establishment and Estate Office.

[M.H.A., Notification No. 7/5/1959-Ests. (A) dated the 25th May, 1959 as amended by Notification No. 11012/19/84-Estt. (A), dated 28th July, 1986].

MINISTRY OF TOURISM AND CIVIL AVIATION AND MINISTRY OF SHIPPING AND TRANSPORT

(i) Locally recruited staff in Tourist Offices abroad.

(ii) Work-charged personnel of the Mangalore Projects and the Tuticorin Harbour Projects.

[M.H.A., Notification No. 7/1/66-Ests. (A), dated the 11th April, 1966].

PART II

CLASSIFICATION

4. Classification of Services

(1) the Civil Services of the Union shall be Classified as follows :-

(i) Central Civil Services, Group 'A';

(ii) Central Civil Services, Group 'B';

(iii) Central Civil Services, Group 'C';

(iv) Central Civil Services, Group 'D';

(2) If a Service consists of more than one grade, different grades of such Service may be included in different groups.

5. Constitution of Central Civil Services

The Central Civil Services, Group 'A', Group 'B', Group 'C' and Group 'D', shall consist of the Services and grades of Services specified in the Schedule.

6. Classification of Posts

Civil Posts under the Union other than those ordinarily held by persons to whom these rules do not apply, shall, by a general or special order of the President, be Classified as follows :-

(i) Central Civil Posts, Group 'A';

(ii) Central Civil Posts, Group 'B';

(iii) Central Civil Posts, Group 'C';

(iv) Central Civil Posts, Group 'D';

Government of India's orders/decisions :-

(1) Notification

In exercise of the powers conferred by Rule 6 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, as amended by the Central Civil Services (Classification, Control and Appeal) Amendment Rules, 1975 and after consultation with the Comptroller and Auditor General of India in relation to the persons serving in the Indian Audit and Accounts Department, the President hereby direct that with effect from the date of issue of this order, all civil posts under the Union, shall, (subject to such exceptions as Government may, by any general or special order, make from time to time), be reclassified as Group A, Group B, Group C and Group D, as the case may be, as indicated below :-

Existing Classification Revised Classification

Class I Group A

Class II Group B

Class III Group C

Class IV Group D

Provided that

(i) the classification of any posts created or deemed to have been created on or after 01.01.1973 in the revised scale but before the date of issue of this order, as specific additions to cadres existing prior to 01.01.1973 shall be the same as that of the posts in the cadres to which they have been added and

(ii) any other posts not covered by (i) above created or deemed to have been created in their revised scale of pay on or after 01.01.1973 but before the date of issue of this order having a classification higher than the one envisaged by para 2 of this order shall be reclassified in terms of that paragraph but without prejudice to the status of the existing incumbents of such posts.

[Deptt. Of Personnel & A.R. Notification No. 21/2/74-Estt. (D) dated 11.11.1975]

(2) Order

In exercise of the powers conferred by proviso to article 309 and clause 5 of article 148 of the Constitution read with Rule 6 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and in supersession of paragraph 2 of the notification of the Government of India in the Department of Personnel and Administrative Reforms number S.O. 5041 dated the 11th November, 1975 as amended by the notification of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) number S.O. 1752 dated the 30th June, 1987, and after consultation with the Comptroller and Auditor General of India in relation to the persons serving in the Indian Audit and Accounts Department, the President hereby directs that with effect from the date of publication of this order in the Official Gazette, all civil posts under the Union, shall be classified as follows :-

Sl.No.	Description of Posts	Classification of posts
1.	A Central Civil post carrying a pay or a scale of pay with a	Group A

	maximum of not less than Rs. 13,500	
2.	A Central Civil post carrying a pay or a scale of pay with a maximum of not less than Rs. 9,000 but less than Rs. 13,500	Group B
3.	A Central Civil post carrying a pay or a scale of pay with a maximum of over Rs. 4,000 but less than Rs. 9,000	Group C
4.	A Central Civil post carrying a pay or a scale of pay the maximum of which is Rs. 4,000 or less	Group D

Explanation :- For the purpose of this order –

(i) 'Pay' has the same meaning as assigned to it in F.R. 9 (21) (a) (I);

(ii) 'Pay or scale of pay', in relation to a post, means the pay or the scale of pay of the post prescribed under the Central Civil Services (Revised Pay) Rules, 1997.

[Deptt. Of Personnel & Training Order No. 13012/1/98-Estt. (D) dated 20.04.1998]

(3) Order

S.O. 641 (E) – In exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148 of the Constitution read with rule 6 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and in partial modification of the Government of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Order number S.O. 332 dated the 20th April, 1998 and after consultation with the Comptroller and Auditor General of India in relation to persons serving in the Indian Audit and Accounts Department, the President hereby directs that, with effect from the date of publication of this Order in the Official Gazette, all posts of Senior Audit Officers and Senior Account Officers in the Office of the Comptroller and Auditor General of India and in all organized Accounts Cadres in the scale of pay or Rs. 8000-275-13500 shall be classified as Group 'B'

[Deptt. Of Personnel & Training Order No. 13012/1/98-Estt. (D) dated 29th July, 1998]

(4) Classification of Posts

Under the Central Civil Services (Classification, Control and Appeal) Rules, 1965, all Central Government posts are classified into four categories, viz., Group "A", "B", "C" and "D". This classification is based on the norms prescribed in Department of Personnel and Training Notification No. 13012/2/87-Estt. (D) dated the 30th June, 1987. The classification serves an important administrative purpose including in matters of recruitment/disciplinary cases, etc. Some allowances are also granted with reference to the classification of the posts. The Fifth Central Pay Commission had, however, recommended a new classification dividing all Central Civil posts into six categories namely, Top Executives, Senior Executives, Executives, Supervisory Staff, Supporting Staff and Auxiliary Staff. These recommendations of the Pay Commission had been examined and after consideration of all pros and cons of the matter, it has been decided not to accept classification of posts as recommended by the Pay Commission and to retain the existing classification into Groups "A", "B", "C" and "D".

2. Consequent upon the revision of pay scales on the basis of the recommendations of the Fifth Central Pay Commission, it has, however, become necessary to prescribe revised norms for categorization of posts into the above four categories based on the revised pay scales as approved by the Government.

3. Accordingly, A Notification classifying various Civil posts into Groups "A", "B", "C" and "D" based on revised norms of pay scales/pay ranges has been notified in the Official Gazette vide SO 332 (E) dated 20th April, 1998. A copy of the Notification is enclosed. (decision No. (2)].

4. In some Ministries/Departments posts may exist which are not classified as per the norms laid by this Department. It would be seen that all posts would now stand classified strictly in accordance with the norms of pay scales/pay as prescribed under the Notification. If for any specific reason the concerned Ministry/Department proposes to classify the

posts differently, it would be necessary for that Department to send a specific proposal to Department of Personnel & Training giving full justification in support of the proposal within three months of this OM so that the exceptions to the norms of classification as laid down in S.O. 332(E) dated 20th April, 1998 can be notified.

[Deptt. Of Personnel and Training OM No. 13012/1/98-Estt. (D), dated 12th June, 1998

(5) Classification of Posts - Clarification

References are being received seeking clarifications whether the revised norms of pay scales/pay would be applicable for classification of posts under the flexible complementing scheme or other lateral advancement schemes.

2. There are many promotion schemes such as merit promotion scheme, career advancement scheme, in-situ promotion scheme etc. where promotions are not linked to availability of vacancy in the higher grade and promotions are allowed in the higher grade in a time bound manner after assessment of the official by temporarily upgrading the post to the higher grade, which gets reverted to the lowest level at which it was originally sanctioned upon vacation of the post by the incumbent due to retirement, further promotion to vacancy based post etc. In many cases, higher scales are allowed on expiry of the specified length of service, even while the person continues to hold the same post such as the Assured Career Progression Scheme. It is clarified that in all such schemes, the classification of the post shall be determined with reference to the grade in which the post is originally sanctioned irrespective of the grade/pay scale in which the officer may be placed at any point of time.

[Deptt. Of Personnel & Training OM No. 11012/5/2000-Estt. (A) dated 10th May, 2000.]

6-A.

All reference to Central Civil Services/Central Civil Posts, Class I, Class II, Class III and Class IV in all Rules, Orders, Schedules, Notifications, Regulations, Instructions in force, immediately before the commencement of these rules shall be construed as references to Central Civil Services/Central Civil Posts, Group 'A', Group 'B', Group 'C' and Group 'D' respectively, and any reference to "Class or Classes" therein in this context shall be construed as reference to "Group or Groups", as the case may be.

7. General Central Service

Central Civil posts of any Group not included in any other Central Civil Service shall be deemed to be included in the General Central Service of the corresponding Group and a Government servant appointed to any such post shall be deemed to be a member of that Service unless he is already a member of any other Central Civil Service of the same Group.

PART III

APPOINTING AUTHORITY

8. Appointments to Group 'A' Services and Posts

All appointments to Central Civil Services, Group 'A' and Central Civil Posts, Group 'A', shall be made by the President :

Provided that the President may, by a general or a special order and subject to such conditions as he may specify in such order, delegate to any other authority the power to make such appointments.

Government of India's orders/decisions :

(1) Delegation of powers to Administrator of Goa, Daman and Diu –

In pursuance of the proviso to rule 8 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the

President hereby orders that all appointments to Central Civil Services and Posts, Class I, under the Government of Goa, Daman and Diu, shall be made by the Administrator of Goa, Daman and Diu :

Provided that no appointment to the post of Chief Secretary, Finance Secretary, Inspector General of Police, or Development Commissioner or any other post which carries an ultimate salary of Rupees two thousand per mensem or more shall be made except with the previous approval of the Central Government.

[M.H.A. Order No. 7/1/65-Ests. (A) dated the 10th February, 1965]

(2) Delegation of powers to Administrator of Dadra and Nagar Haveli –

The President hereby orders that all appointments to Central Civil Services and Posts, Class I under the Government of Dadra and Nagar Haveli shall be made by the Administrator of Dadra and Nagar Haveli.

Provided that no appointment to the post of Chief Secretary, Finance Secretary, Inspector General of Police or Development Commissioner or any other post which carries an ultimate salary of Rupees two thousand per mensem or more shall be made except with the previous approval of the Central Government.

[M.H.A. Order No. 7/6/69-Ests. (A) dated the 12th June, 1969]

(3) Delegation of powers to Administrators of Arunanchal Pradesh and Mizoram –

In pursuance of the proviso to rule 8 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the President hereby orders that all appointments to Central Civil Services, Class I and Central Civil Posts, Class I, under the Arunachal Pradesh and Mizoram Administrations shall respectively be made by the Administrators of the Union territories of Arunachal Pradesh and Mizoram appointed under article 239 of the Constitution :

Provided that no appointment to the post of Chief Secretary, Finance Secretary, Inspector General of Police or Development Commissioner or any other post which carries an ultimate salary of Rupees two thousand per mensem or more shall be made except with the previous approval of the Central Government.

[Dept. of Personnel Order No. 7/2/72-Est.(A), dt. 21st January, 1972].

9. Appointments to other Services and Posts

(1) All appointments to the Central Civil Services (other than the General Central Service) Group 'B', Group 'C' and Group 'D', shall be made by the authorities specified in this behalf in the Schedule :

Provided that in respect of Group 'C' and Group 'D', Civilian Services, or civilian posts in the Defence Services appointments may be made by officers empowered in this behalf by the aforesaid authorities.

(2) All appointments to Central Civil Posts, Group 'B', Group 'C' and Group 'D', included in the General Central Service shall be made by the authorities specified in that behalf by a general or special order of the President, or where no such order has been made, by the authorities - specified in this behalf in the Schedule.

PART IV

SUSPENSION

10. Suspension

(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant

under suspension-

(a) where a disciplinary proceeding against him is contemplated or is pending; or

(aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or

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

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.

(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority -

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

EXPLANATION - The period of forty-eight hours referred to in clause (b) of this sub-rule 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.

(3) 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 under these rules 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.

(4) 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.

"(5)(a) Subject to the provisions contained in sub-rule (7), an order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so."

(b) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule 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.

(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority competent to modify or revoke the suspension, before expiry of ninety 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 one hundred and eighty days at a time.

(7) An order of suspension made or deemed to have been made under sub-rules (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days :

Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under suspension at the time of completion of ninety days of suspension and the ninety days period in such case will count 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."

Government of India's decisions :

(1) Report of arrest to superiors by Government servants :-

It shall be the duty of the 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 fact and circumstances leading to the arrest of the person call for his suspension. Failure on the part of any Government servant to so inform his official superiors 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.

[MHA letter No. 39/59/54-Est.(A) dated the 25th February, 1955]

State Governments have also been requested to issue necessary instructions to Police authorities under their control to send prompt intimation of arrest and/or release on bail etc. of Central Government servant to the latter's official superiors.

(2) Headquarters of Government servant under suspension

A question recently arose whether an authority competent to order the suspension of an official has the power to prescribe his headquarters during the period of suspension. The matter has been examined at length in this Ministry and the conclusions reached are stated in the following paragraphs.

2. 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. 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.

3. The Ministry of Finance/etc. may bring the above to the notice of all concerned.

[M.H.A. O.M. No. 39/5/56-Ests. (A) dated the 8th September, 1956]

(3) How suspension is to be regulated during pendency of criminal proceedings, arrests, detention etc.

The case of suspension during pendency of criminal proceedings or proceeding for arrest, for debt or during detention under a law providing for preventive detention, shall be dealt with in the following manner hereafter :-

(a) A Government servant who is detained in custody under any law providing for preventive detention or a result of a proceeding either on a criminal charge or for his arrest for debt shall if the period of detention exceeds 48 hours and unless he is already under suspension, be deemed to be under suspension from the date of detention until further orders as contemplated in rule 10 (2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Government servants who is undergoing a sentence of imprisonment shall be also dealt with in the same manner pending decision on the disciplinary action to be taken against him.

(b) A Government servant against whom a proceeding has been taken on a criminal charge but who is not actually detained in custody (e.g., a person released on bail) may be placed under suspension by an order of the competent authority under clause (b) of Rule 10 (1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. If the charge is connected with the official position of the Government servant or involving any moral turpitude on his part, suspension shall be ordered under this rule unless there are exceptional reasons for not adopting this course.

(c) A Government servant against whom a proceeding has been taken for arrest for debt but who is not actually detained in custody may be placed under suspension by an order under clause (a) of Rule 10 (1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 i.e., only if a disciplinary proceeding against him is contemplated.

(d) When a Government servant who is deemed to be under suspension in the circumstances mentioned in clause (a) or who is suspended in circumstances mentioned in clause (b) is re-instated without taking disciplinary proceedings against him, his pay and allowances for the period of suspension will be regulated under FR 54 i.e., in event of his being acquitted of blame or if the proceedings taken against him was for his arrest for debt or it being proved that his liability arose from circumstances beyond his control or the detention being held by any competent authority to be wholly unjustified, the case may be dealt with under FR 54 (2), otherwise it may be dealt with under FR 54 (3).

[M.O.F. No. F.15(8)-E IV/57, dated 28th March, 1959].

(4) Circumstances under which a Government servant may be placed under suspension –

Recommendation No. 61, contained in paragraph 8.5 of the report of the Committee on Prevention of Corruption, has been carefully considered in the light of the comments received from the Ministries. It has been decided that public interest should be guiding factor in deciding to place a Government servant under suspension, and the disciplinary authority, should have discretion to decide this taking all factors into account. However, the following circumstances are indicated in which a Disciplinary Authority may consider it appropriate to place a Government servant under suspension. These are only intended 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 (1) and (2)] 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 :

(a) 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.

(b) Certain types of misdemeanor where suspension may be desirable in the four circumstances mentioned are indicated below :-

(i) any offence or conduct involving moral turpitude;

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

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

(iv) desertion of duty;

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

In respect of the types of misdemeanor specified in sub clauses (iii) and (v) discretion has to be exercised with care.

[MHA OM No. 43/56/64-AVD dated the 22nd October, 1964].

(5) Forwarding of Application of Government servants involved in disciplinary proceedings :

A case has come to the notice of this Ministry in which the application of a Government servant against whom departmental proceedings were pending was forwarded for an assignment under an international organisation. The propriety of such an action has been considered carefully and the following decisions have been taken :-

(a) Cases of Government servants who are under suspension or against whom departmental proceedings are pending :-

Applications of such Government servants should not be forwarded, nor should they be released, for any assignment, scholarship, fellowship, training, etc. under an international agency / organisation or a foreign Government. Such Government servants should also not be sent or allowed to go on deputation or foreign service to posts under an authority in India.

(b) Cases of Government servants on whom the penalty of withholding of increments or reduction to a lower stage in a time-scale or to a lower time scale or to a lower service, grade or post has been imposed :-

Applications of such Government servant should not be forwarded, nor should they be released during the currency of the penalty, for any assignment under international agency/organisation or a foreign Government. Such Government servants should also not be sent or allowed to go, during the currency of the penalty, on deputation or foreign service to posts under an authority in India. Even after the expiry of the penalty, it will have to be examined, having regard to the nature of the offence and the proximity of its occurrence, whether the Government servant concerned should be permitted to go on foreign assignment/deputation to another Department/foreign service to an authority in India.

[MHA OM No. 39/17/63-Ests. (A) dated the 6th September, 1968]

(5A) Forwarding of applications for other posts – Principles regarding –

The question regulating the forwarding of applications to the Ministries/Departments/other Government offices or to the UPSC from candidates serving under the Government has been reviewed.

2. It has been decided to consolidate the instructions on the subject. Therefore, the following instructions in supersession of the instructions contained in this Department's OMs No. 11012/10/75-Estt. (A) dated 18.10.1975 and No. 42015/4/78-Estt.

(C) dated 01.01.1979 are issued for guidance of all the Administrative Authorities.

3. 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 :-

(i) He is under suspension; or

(ii) Disciplinary proceedings are pending against him and a charge sheet has been issued; or

(iii) Sanction for prosecution, where necessary has been accorded by the competent authority; or

(iv) where a prosecution sanction is not necessary, a charge sheet has been filed in a court of law against him for criminal prosecution.

4. When the conduct of a Government Servant is under investigation (by the CBI or by the controlling Department) but the investigation has not reached the stage of issue of charge sheet or prosecution sanction or filing of charge-sheet for criminal prosecution in a court, the application of such a Government servant may be forwarded together with brief comments on the nature of allegations and it should also be made clear that in the event of actual selection of the Government servant, he would not be released for taking up the appointment, if by that time charge sheet for imposition of penalty under CCS (CCA) Rules, 1965 or sanction for prosecution is issued or a charge sheet is filed in a court to prosecute the Government Servant, or he is placed under suspension.

5. Where Government servants apply directly to UPSC as in the case of direct recruitment, they must immediately inform the Head of their office/Department giving details of the examination/post for which they have applied, requesting him to communicate his permission to the Commission directly. If, however, the Head of the Office/Department considers it necessary to withhold the requisite permission, he should inform the Commission accordingly within 45 days of the date of closing for receipt of applications. In case any situation mentioned in para 3 is obtaining, the requisite permission should not be granted and UPSC should be immediately informed accordingly. In case a situation mentioned in para 4 is obtaining, action may be taken to inform UPSC of this fact as also the nature of allegations against the Government servant. It should also be made clear that in the event of actual selection of Government servant, he would not be relieved for taking up the appointment, if the charge sheet/prosecution sanction is issued or a charge sheet is filed in a court for criminal prosecution, or if the Government servant is placed under suspension.

6. The administrative Ministries/Departments of the Government of India may also note that, in case of Direct Recruitment by selection viz., "Selection by Interview" it is the responsibility of the requisitioning Ministry / Department to bring to the notice of the Commission any point regarding unsuitability of the candidate (Government servant) from the vigilance angle and that the appropriate stage for doing so would be the consultation at the time of preliminary scrutiny i.e. when the case is referred by the Commission to the Ministry/Departments for the comments of the Ministry's Representatives on the provisional selection of the candidates for interview by the Commission.

[Deptt. Of Personnel & Training OM No. AB14017/101/91-Estt. (RR) dated 14th May, 1993]

(6) Suspension – Reduction of time limit fixed for serving charge-sheet :-

In the Ministry of Home Affairs OM No. 221/18/65-AVD, dated the 7th September, 1965, the attention of all disciplinary authorities was drawn to the need for quick disposal of cases of Government servants under suspension and it was desired, in particular, that the investigation in such cases should be completed and a charge-sheet filed in court, in cases of prosecution, or served on the Government servant, in cases of departmental proceedings, within six months. The matter was considered further at a meeting of the National Council held on the 27th January, 1971 and in partial modification of the earlier orders it has been decided that every effort should be made to file the charge-sheet in court or serve the charge-sheet on the Government servant, as the case may be within three months of the date of suspension, and in cases in which it may not be possible to do so, the disciplinary authority should report the matter to the next higher authority explaining the reasons for the delay.

[Cabinet Sectt. (Department of Personnel) Memo. No. 39/39/70-Ests.(A) dated the 4th February, 1971].

Government have already reduced the period of suspension during investigation, barring exceptional cases which are to be reported to the higher authority, from six months to three months. It has been decided that while the orders contained in the Office Memorandum of 4th February, 1971 would continue to be operative in regard to cases pending in courts in respect of the period of suspension pending investigation before the filing of a charge-sheet in the Court as also in respect of serving of the charge sheet on the Government servant in cases of departmental proceedings, in cases other than those pending in courts, the total period of suspension viz., both in respect of investigation and disciplinary proceedings should not ordinarily exceed six months. In exceptional cases where it is not possible to adhere to this time limit, the disciplinary authority should report the matter to the next higher authority, explaining the reasons for the delay.

[Cabinet Sectt. (Department of Personnel) OM No. 39/33/72-Estt. (A) dated the 16th December, 1972].

In spite of the instructions referred to above, instances have come to notice in which Government servants continued to be under suspension for unduly long periods. Such unduly long suspension while putting the employee concerned to undue hardship, involves payment of subsistence allowance without the employee performing any useful service to the Government. It is, therefore impressed on all the authorities concerned that they should scrupulously observe the time limits laid down in the Office Memoranda referred to in the preceding paragraph and review the cases of suspension to see whether continued suspension in all cases is really necessary. The authorities superior to the disciplinary authorities should also exercise a strict check on cases in which delay has occurred and give appropriate directions to the disciplinary authorities keeping in view the provisions contained in the aforesaid Office Memoranda.

[Department of Personnel & AR OM No. 11012/7/78-Ests.(A) dated the 14th September, 1978].

The attention of the Ministry of Finance etc. is invited to this Department's OM No. 11012/7/78-Estt. (A) dated 14th September, 1978, in which the existing instructions relating to suspension of Government employees have been consolidated. In spite of these instructions it has been brought to the notice of this Department that Government servants are some times kept under suspension for unduly long periods. It is, therefore, once again reiterated that the provisions of the aforesaid instructions in the matter of suspension of Government employees and the action to be taken thereafter should be followed strictly. Ministry of Finance etc. may, therefore, take appropriate action to bring the contents of the OM of 14.09.1978, to the notice of all the authorities concerned under their control, directing them to follow those instructions strictly.

2. So far as payment of subsistence allowance is concerned, Ministry of Finance etc. are also requested to bring the contents of FR 53 to the specific notice of all authorities under their control, with particular reference to the provisions in the aforesaid rule regarding the need for review of the rate of subsistence allowance after a continued suspension of more than 90 days, for strict compliance.

[Deptt. of Personnel & A.R. O.M. No. 42014/7/83-Ests.(A) dated the 18th February, 1984].

(6A) Reasons for suspension to be communicated on expiry of three months period if no charge-sheet is issued.

Under Rule 10 (1) of the CCS (CCA) Rules, 1965, the competent authority may place a Government servant under suspension –

(a) where a disciplinary proceeding against him is contemplated or is pending; or

(b) Where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interests of security of the State; or

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

The Government servant is also deemed to have been placed under suspension by an order of the competent authority in

the circumstances mentioned in rule 10 (2) of the aforesaid rules.

2. Where a Government servant is placed under suspension, he has a right of appeal against the order of suspension vide Rule 23 (i) of the CCS (CCA) Rules, 1965. This would imply that a Government servant who is placed under suspension should generally know the reasons leading to his suspension so that he may be able to make an appeal against it. Where a Government servant is placed under suspension on the ground that a disciplinary proceeding against him is pending or a case against him in respect of any criminal offence is under investigation, inquiry or trial, the order placing him under suspension would itself contain a mention in this regard and he would, therefore, be aware of the reasons leading to his suspension.

3. Where a Government servant is placed under suspension on the ground of "contemplated" disciplinary proceeding, the existing instructions provide that every effort would be made to finalise the charges, against the Government servant within three months of the date of suspension. If these instructions are strictly adhered to, a Government servant who is placed under suspension on the ground of contemplated disciplinary proceedings will become aware of the reasons for his suspension without much loss of time. However, there may be some cases in which it may not be possible for some reason or the other to issue a chargesheet within three months from the date of suspension. In such cases, the reasons for suspension should be communicated to the Government servant concerned immediately on the expiry of the aforesaid time-limit prescribed for the issue of a chargesheet, so that he may be in a position to effectively exercise the right of appeal available to him under Rule 23 (i) of the CCS (CCA) Rules, 1965, if he so desires. Where the reasons for suspension are communicated on the expiry of a time-limit prescribed for the issue of chargesheet, the time-limit of forty five days for submission of appeal should be counted from the date on which the reasons for suspension are communicated.

4. The decision contained in the preceding paragraph will not, however, apply to cases where a Government servant is placed under suspension on the ground that he has engaged himself in activities prejudicial to the interests of the security of the State.

[Deptt. of Personnel & A.R. O.M. No. 35014/1/81-Ests.(A) dated the 9th November, 1982]."

(7) Timely payment of subsistence allowance :-

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 inquiry 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 provisions of Article 311 (2) of the Constitution as the person concerned did not receive a reasonable opportunity of defending himself in the disciplinary proceedings.

2. In the light of the judgment mentioned above, it may be impressed on all authorities concerned that they should make timely payment of subsistence allowance to Government servants who are placed under suspension so that they may not be put to financial difficulties. It may be noted that, by its very nature, subsistence allowance is meant for the subsistence of a suspended Government servant and his family during the period he is not allowed to perform any duty and thereby earn a salary. Keeping this in view, all concerned authorities should take prompt steps to ensure that after a Government servant is placed under suspension, he received subsistence allowance without delay.

3. The judgment of the Supreme Court referred to in para 1 above indicates that in that case, the disciplinary authority proceeded with the enquiry ex-parte notwithstanding the fact that the Government servant concerned had specifically pleaded his inability to attend the enqiury on account of financial difficulties caused by non-payment of subsistence allowance. The Court had held that holding the enquiry ex-parte 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 invoking the provisions of rule 14 (20) of the CCS (CCA) Rules, 1965.

[Cabinet sect.(Department of Personnel & Administrative Reforms) OM No. 11012/10/76-Estt.(A) dated 6th October, 1976].

As mentioned in the OM dated 6th October, 1976 referred to above, the Supreme Court have held that if a Government

servant under suspension pleads his inability to attend the disciplinary proceedings on account of non-payment of subsistence allowance, the enquiry conducted against him, ex-parte, could be construed as denial of reasonable opportunity of defending himself. It may, therefore, once again be impressed upon all authorities concerned that after a Government servant is placed under suspension, prompt steps should be taken to ensure that immediate action is taken under FR 53, for payment of subsistence allowance and the Government servant concerned receives payment of subsistence allowance without delay and regularly subject to the fulfilment of the condition laid down in FR 53. In cases where recourse to ex-parte proceedings becomes necessary, if should be checked up and confirmed that the Government servant's inability to attend the enquiry is not because of non-payment of subsistence allowance.

[Deptt. of Personnel & Training, OM No. 11012/17/85-Estt.(A) dated the 28th October, 1985.

(8) Erroneous detention or detention without basis –

One of the items considered by the National Council (JCM) in its meeting held in January, 1977 was a proposal of the Staff Side that a Government servant who was deemed to have been placed under suspension on account of his detention or on account of criminal proceedings against him should be paid full pay and allowances for the period of suspension if he has been discharged from detention or has been acquitted by a Court.

2. During the discussion, it was clarified to the Staff Side that the mere fact that a Government servant who was deemed to have been under suspension, due to detention or on account of criminal proceedings against him, has been discharged from detention without prosecution or has been acquitted by a Court would not make him eligible for full pay and allowances because often the acquittal may be on technical grounds but the suspension might be fully justified. The Staff Side were, however, informed that if a Government servant was detained in police custody erroneously or without any basis and thereafter he is released without any prosecution, in such cases the official would be eligible for full pay and allowances.

3. It has accordingly been decided that in the case of a Government servant who was deemed to have been placed under suspension due to his detention in police custody erroneously or without basis and thereafter released without any prosecution having been launched, the competent authority should apply its mind at the time of revocation of the suspension and re-instatement of the official and if he comes to the conclusion that the suspension was wholly unjustified, full pay and allowances may be allowed.

[Department of Personnel & A.R. OM No. 35014/9/76-Estt. (A) dated 08.08.1977].

(9) Deemed suspension on grounds of detention to be treated as revoked if conviction does not follow –

In the Committee of National Council (JCM) set up to review the CCS (CCA) Rules, 1965, the Staff Side had expressed the view that the period of deemed suspension on grounds of detention should be treated as duty in all cases where conviction did not follow. The matter was discussed and it was agreed to that in cases of deemed suspension, if the cause of suspension ceases to exist the revocation of the suspension should be automatic.

2. Attention is invited to the instruction contained in this Department's OM No. 35014/9/76-Ests.(A) dated 08.08.1977 [decision (2) (a) above] which provides that in the case of a Government servant, who was deemed to have been placed under suspension due to detention in police custody erroneously or without basis and thereafter released without any prosecution having been launched, the competent authority should apply its mind at the time of revocation of the suspension and reinstatement of the official and if he comes to the conclusion that the suspension was wholly unjustified, full pay and allowances may be allowed. There instructions may be kept in view and scrupulously complied with in all cases where deemed suspension is found to be erroneous and the employee concerned is not prosecuted. In all such cases, the deemed suspension under Rule 10 (2) of the CCS (CCA) Rules, 1965 may be treated as revoked from the date the cause of the suspension itself ceases to exist i.e. the Government servant is released from police custody without any prosecution having been launched. However, it will be desirable for the purpose of administrative record to make a formal order for revocation of such suspension under Rule 10 (5) of the CCS (CCA) Rules, 1965.

[Deptt. of Personnel & Trg. OM No. 11012/16/85-Estt. (A) dated 10.01.1986]

(10) Disciplinary proceedings against an employee appointed to a higher post on 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 proceedings 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.

[Deptt. of Pers. & Trg. OM No. 11012/9/86-Estt. (A) dated the 24th December, 1986]

(11) Suspension in cases of dowry death :-

Sub-rule (1) of rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 provides, inter alia, that a Government servant may be placed under suspension where a disciplinary proceeding against him is contemplated or is pending or where a case against him in respect of any criminal offence is under investigation, inquiry or trial. Sub-rule (2) of the same rule lays done that a Government servant shall be deemed to have been placed under suspension by an order of the appointing authority w.e.f. the date of detention if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-either hours.

2. As Government takes a very serious view of offences against women, Government has reviewed the provisions in the rules in regard to placing a Government servant under suspension if he is accused of involvement in a case of "dowry death" as defined in Section 304-B of the Indian Penal Code. The Section reads as follows :-

"304-B(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation – For the purpose of this sub-section "dowry" shall have the same meaning as in Section 2 of the "dowry Prohibition Act, 1961."

3. If a case has been registered by the Police against a Government servant under Section 304-B of the I.P.C., he shall be placed under suspension in the following circumstances by the competent authority by invoking the provisions of sub-rule (1) of 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 placed under suspension immediately on submission of a police report under sub-section (2) of section 173 of the Code of Criminal Procedure, 1973, to the Magistrate, if the report prima-facie indicates that the offence has been committed by the Government servant.

[Deptt. of Personnel & Trg. OM No. 11012/8/87-Ests. (A) dated the 22nd June, 1987].

(12) Resignation from Service procedure in respect of :-

Instructions have been issued from time to time on the subject of resignation. These instructions have now been consolidated for facility of reference and guidance of all the Ministry/Departments of the Government of India.

1. Resignation is an intimation in writing sent to the competent authority by the incumbent of a post, of his intention or proposal to resign the office/post either immediately or from a future specified date. A resignation has to be clear and unconditional.

2. it is not in the interest of Government to retain an unwilling Government servant in service. The general rule, therefore, is that a resignation of a Government servant from service should be accepted, except in the circumstances indicated below :-

(i) Where the Government servant concerned is engaged on work of importance and it would take time to make alternative arrangements for filling the post, the resignation should not be accepted straightway but only when alternative arrangements for filling the post have been made.

(ii) Where a Government servant who is under suspension submits a resignation the competent authority should examine, with reference to the merit of the disciplinary case pending against the Government servant, whether it would be in the public interest to accept the resignation. Normally, as Government servants are placed under suspension only in cases of grave delinquency, it would not be correct to accept a resignation from a Government servant under suspension. Exceptions to this rule would be where the alleged offences do not involve moral turpitude or where the quantum of evidence against the accused Government servant is not strong enough to justify the assumption that if the departmental proceedings were continued, he would be removed or dismissed from service, or where the departmental proceedings are likely to be so protracted that it would be cheaper to the public exchequer to accept the resignation.

In those cases where acceptance of resignation is considered necessary in the public interest, the resignation may be accepted with the prior approval of the Head of the Department in respect of Group 'C' & 'D' posts and that of the Minister in charge in respect of holders of Group 'A' and 'B' posts. In so far as Group 'B' officers serving in Indian Audit and Accounts Department are concerned, the resignation of such officers shall not be accepted except with the prior approval of the Comptroller and Auditor General of India. Concurrence of the Central Vigilance Commission should be obtained before submission of the case to the Minister-in-charge/Comptroller and Auditor General, if the Central Vigilance Commission had advised initiation of departmental action against the Government servant concerned or such action has been initiated on the advice of the Central Vigilance Commission.

3. A resignation becomes effective when it is accepted and the Government servant is relieved of his duties. If a Government servant who had submitted a resignation, sends an intimation in writing to the appointing authority withdrawing his earlier letter of resignation before its acceptance by the appointing authority, the resignation will be deemed to have been automatically withdrawn and there is no question of accepting the resignation. In case, however, the resignation had been accepted by the appointing authority and the Government servant is to be relieved from a future date, if any request for withdrawing the resignation is made by the Government servant before he is actually relieved of his duties, the normal principle should be to allow the request of the Government servant to withdraw the resignation. If, however, the request for withdrawal is to be refused, the grounds for the rejection of the request should be duly recorded by the appointing authority and suitably intimated to the Government servant concerned.

4. Since a temporary Government servant can sever his connection from a Government service by giving a notice of termination of service under Rule 5 (1) of the Central Civil Services (TS) Rules, 1965, the instructions contained in this Office Memorandum relating to acceptance of resignation will not be applicable in cases where a notice of termination of service has been given by a temporary Government servant. If, however, a temporary Government servant submits a letter of resignation in which he does not refer to Rule 5 (1) of the CCS (TS) Rules, 1965, or does not even mention that it may be treated as a notice of termination of service, he can relinquish the charge of the post held by him only after the resignation is duly accepted by the appointing authority and he is relieved of his duties and not after the expiry of te notice period laid down in the Temporary Service Rules.

5. The procedure for withdrawal of resignation after it has become effective and the Government servant had relinquished the charge of his earlier post, are governed by the following statutory provision in sub-rules (4) to (6) of Rule 26 of the CCS

(Pension) Rules, 1972 which corresponds to Art. 418 (b) of the Civil Service Regulations:-

"(4) The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely :-

(i) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;

(ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper;

(iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days;

(iv) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available;

(v) request for withdrawal of resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government;

(vi) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service."

6. Since the CCS (Pension) Rules are applicable only to holders of permanent posts, the above provisions would apply only in the case of a permanent Government servant who had resigned his post. The cases of withdrawal of resignation of permanent Government servants which involve relaxation of any of the provisions of the above rules will need the concurrence of the Ministry of Personnel, P.G. & Pensions, as per Rule 88 of the CCS (Pension) Rules, 1972.

7. Cases of quasi-permanent Government servants requesting withdrawal of resignation submitted by them would be considered by the Department of Personnel and Training on merits.

8. A Government servant who has been selected for a post in a Central Public Enterprises/Central Autonomous body may be released only after obtaining and accepting his resignation from the Government service. Resignation from Government service with a view to secure employment in a Central Public enterprise with proper permission will not entail forfeiture of the service for the purpose of retirement/terminal benefits. In such cases, the Government servant concerned shall be deemed to have retired from service from the date of such resignation and shall be eligible to receive all retirement/terminal benefits as admissible under the relevant rules applicable to him in his parent organisation.

9. In cases where Government servants apply for posts in the same or other Departments through proper channel and on selection, they are asked to resign the previous posts for administrative reasons, the benefit of past service may, if otherwise admissible under rules, be given for purposes of fixation of pay in the new post treating the resignation as a 'technical formality'.

[Deptt. Of Personnel & Training OM No. 28034/25/87-Ests. (A) dated 11th February, 1988]

(13) Promotion of Government servants against whom disciplinary/court proceedings are pending or whose Conduct is under investigation-Procedure and guidelines to be followed.

The procedure and guidelines to be followed in the matter of promotion of Government servants against whom

disciplinary/court proceedings are pending or whose conduct is under investigation have been reviewed carefully. Government have also noticed the judgement dated 27.08.1991 of the Supreme Court in Union of India etc. vs. K.V. Jankiraman etc. (AIR 1991 SC 2010). As a result of the review and in supersession of all the earlier instructions on the subject (OM No. 39/3/59-Estt.A dated 31.08.1960, 7/28/63-Estt.A dated 22.12.1964, 22011/3/77-Estt.A dated 14.07.1977, 22011/1/79-Estt.A dated 31.01.1982, 22011/2/1986-Estt.A dated 12.01.1988, 22011/1/91-Estt.A dated 31.07.1991), the procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras of this OM for their guidance.

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.

2.1 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 in a sealed cover.

2.2 The same procedure outlined in para 2.1 above will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded.

3. On the conclusion of the disciplinary case/criminal prosecution which result in dropping of allegations against the Govt. 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 the 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 juniormost 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 proceedings/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 circumstance where such denial can be justified.

3.1 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.

3.2 It is also clarified that 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.

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 finalise 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 case 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.

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 finalisation of proceeding, 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 of 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.

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.

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 reserve the right to cancel the ad-hoc promotion and revert at any time the Government servant to the post from which he was promoted.

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 3 above.

5.4 If the Government servant is not acquitted on merits in the criminal prosecution but purely on technical ground 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.

6. 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 regular vacancy should be reserved for such an officer when his case is placed in sealed cover by the DPC.

7. 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 arise after the recommendations of the DPC are received but before he is actually promoted, 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 and the provisions contained in this OM will be applicable in his case also.

[Deptt. of Personnel & Training OM No. 22011/4/91-Estt.(A) dated 14.09.1992]

(13A) Instructions on sealed cover procedure – Applicability to review DPC – clarification regarding.

A question whether the sealed cover procedure is to be followed by a Review DPC has been under consideration of this Department in the light of the decision of the Central Administrative Tribunal in certain cases. The matter has been considered in consultation with the Ministry of Law and it has been decided that the sealed cover procedure as contained in the OM dated 14.09.1992 cannot be resorted to by the Review DPC if no departmental proceedings or criminal prosecution was pending against the Government servant concerned or he/she was not under suspension at the time of meeting of the original DPC or before promotion of his junior on the basis of the recommendations of the original DPC.

[Deptt. of Personnel & Training OM No. 22011/2/99-Estt.(A) dated 21.11.2002]

(13B) Sealed Cover Procedure – Judgment of the Supreme Court in the case of Delhi Jal Board Vs. Mohinder Singh [JT 2002 (10) SC 158].

Para 7 of this Department's OM No. 22011/4/91-Estt. (A) dated 14th September, 1992 envisages as follows :-

"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 arise after the recommendations of the DPC are received but before he is actually promoted, 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 and the provisions contained in this OM will be applicable in his case also."

2. In the case of Delhi Jal Board Vs. Mohindber Singh the Supreme Court [JT 2000 (10) SC 158] has held as follows :-

"The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the disciplinary inquiry exonerating the officers would have to be given effect to as they obviously relate back to the date on which the charges are framed. ……. The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the seal was opened to give effect to it, another departmental inquiry was started by the department, would not come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection."

3. It is, therefore, clarified that para 7 of the O.M. dated 14th September, 1992 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.

4. It is further clarified that 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.

[Deptt. of Personnel & Training OM No. 22011/2/2002-Estt.(A) dated 24.02.2003]

14. Deemed Suspension under Rule 10 (2) of the CCS (CCA) Rules, 1965 - Supreme Court decision in the case of Union of India Vs. Rajiv Kumar.

Reference is invited to Rule 10 (2) of the CCS (CCA) Rules, 1965 which provides that a Government servant shall be deemed to have been placed under suspension by an order of the appointing authority with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding 48 hours.

2. 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 Vs. 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 the 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 Rule 10 of the CCS (CCA) Rules, 1965.

3. Ministries/Departments are requested to bring the above ruling of the Supreme Court to the notice of all concerned so that the same is appropriately referred to in all cases where the question of validity of continued suspension after release from detention of a Government servant comes up consideration before the CAT, High Court or Supreme Court.

[Deptt. of Personnel & Training OM No. 11012/8/2003-Estt.(A) dated 23.10.2003]

(15-A) Suspension of Government servants – Review of – Instructions reg.

The undersigned is directed to say that Rule 10 (Suspension) of the CCS (CCA) Rules, 1965 is being amended to provide that 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. It is also being provided in the Rules that an order of suspension made or deemed to have been under sub-Rules (1) or (2) of rule 10 shall not be valid after 90 days unless it is extended after review for a further period before the expiry of 90 days. It is further being provided that extension of suspension shall not be for a period exceeding 180 days at a time. (copy of the Notification is enclosed).

2. It is, therefore, necessary to constitute Review Committee(s) to review the suspension cases. The composition of Review Committee(s) may be as follows :-

(i) 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.

(ii) 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.

(iii) 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 Departemnt/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.

3. 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.

4. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these instructions are issued in consultation with the Comptroller and Auditor General of India.

5. All Ministries/Departments are requested to bring the above instructions to the notice of all disciplinary authorities under their control and ensure that necessary Review Committees are constituted accordingly. It may also be impressed upon all concerned that lapsing of any suspension order on account of failure to review the same will be viewed seriously.

[Deptt. of Personnel & Training OM No. 11012/4/2003-Estt.(A) dated 7.01.2004]

(15-B) Suspension of government servants – Review of – Instructions reg.

The undersigned is directed to refer to this Department's O.M. of even number dated the 7th January, 2004 which contains guidelines for constitution of Review Committees to review suspension cases. The Notification of even number dated the 23rd December, 2003 inserting sub-rules (6) & (7) in Rule 10+ of the CCS (CCA) Rules, 1965 has been published as GSR No. 2 in the Gazette dated January 3, 2004. It would, therefore, be necessary to review of pending cases in which suspension has exceeded 90 days, by 2nd April, 2004. Other suspension cases will also have to be reviewed before expiry of 90 days from the date of order of suspension.

2. Ministries/Departments are requested to ensure that necessary Review Committees are constituted as per the guidelines laid down in the O.M. dated the 7th January, 2004 and suspension cases are reviewed accordingly.

[Deptt. of Personnel & Training OM No. 11012/4/2003-Estt.(A) dated 19.03.2004]

(15C) Review of suspension - Amendment to the provisions of rule 10 -

The provisions of rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 regarding deemed suspension have since been reviewed by this Department.

2. The provisions in Rule 10 of CCS (CCA) Rules have been modified and amendment to the same have been notified in Notification No. GSR 105 dated 6.06.2007 published in the Gazette of India dated 16.06.2007.

3. As per the original provisions of rule 10 of the CCS (CCA) Rules, 1965, the provision for review within ninety days was applicable to all types of suspensions. However, in cases of continued detention, the review becomes a mere formality with no consequences as a Government servant in such a situation

has to continue to be under deemed suspension. It has, therefore, been decided that a review of suspension shall not be necessary in such cases. Accordingly, a proviso has now been added to sub-rule(7) of the said rule 10 as follows:

"provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule(2), if the Government servant continues to be under detention at the time of completion of ninety days of suspension and the ninety days period for review in such cases will count 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."

4. In deemed suspensions under sub-rule (2), the date of order of suspension may be much later than the deemed date of suspension. With a view to making these provisions explicit, sub-rule (6) of the aforesaid rule 10 has now been amended to substitute the words "ninety days from the date of order of suspension" occurring therein with "**ninety days from the effective date of suspension**". Consequent upon this amendment, it would henceforth be necessary to specifically indicate in the orders of suspension the effective date of suspension.

5. Sub-rule (7) of the aforesaid rule 10 stipulates says that "Notwithstanding anything contained in sub-rule (5)(a), an order of suspension made or deemed to have been made under sub-rule (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days." Sub-rule (5)(a) of the aforesaid rule 10 has, therefore, now been amended to read as follows :-

"subject to the provisions contained in sub-rule (7), an order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so."

Consequently, the words "**Notwithstanding anything contained in sub-rule (5)(a)**" stated in **sub-rule(7) of Rule 10** have become redundant and have, therefore, been **deleted**.

6. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these amendments have been made in consultation with the Comptroller and Auditor General of India.

[DOPT OM No. 11012/4/2007-Estt. (A), dated 12th July, 2007]

PART V

PENALTIES AND DISCIPLINARY AUHTORITIES

11. Penalties

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.

Provided that, in every case in which the charge of possession of assets disproportionate to known-source of income or the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (viii) or clause (ix) shall be imposed :

Provided further that in any exceptional case and for special reasons recorded in writing, any other penalty may be imposed.

EXPLANATION - The following shall not amount to a penalty within the meaning of this rule, namely:-

(i) withholding of increments of a Government servant for his failure to pass any departmental examination in accordance with the rules or orders governing the Service to which he belongs or post which he holds or the terms of his appointment;

(ii) stoppage of a Government servant at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;

(iii) non-promotion of a Government servant, whether in a substantive or officiating capacity, after consideration of his case, to a Service, grade or post for promotion to which he is eligible;

(iv) reversion of a Government servant officiating in a higher Service, grade or post to a lower Service, grade or post, on the ground that he is considered to be unsuitable for such higher Service, grade or post or on any administrative ground unconnected with his conduct;

(v) reversion of a Government servant, appointed on probation to any other Service, grade or post, to his permanent Service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing such probation;

(vi) replacement of the services of a Government servant, whose services had been borrowed from a State Government or any authority under the control of a State Government, at the disposal of the State Government or the authority from which the services of such Government servant had been borrowed;

(vii) compulsory retirement of a Government servant in accordance with the provisions relating to his superannuation or retirement;

(viii) termination of the services -

(a) of a Government servant appointed on probation, during or at the end of the period of his probation, in accordance with the terms of his appointment or the rules and orders governing such probation, or

(b) of a temporary Government servant in accordance with the provisions of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, or

(c) of a Government servant, employed under an agreement, in accordance with the terms of such agreement.

Government of India's decisions :

(1) Distinction between Censure and Warning :-

An order of "Censure" is a formal and public act intended to convey that the person concerned has been guilty of some blameworthy act or omission for which it has been found necessary to award him a formal punishment, and nothing can amount to a "censure" unless it is intended to be such a formal punishment and imposed for "good and sufficient reason" after following the prescribed procedure. A record of the punishment so imposed is kept on the officer's confidential roll and the fact that he has been 'censured' will have its bearing on the assessment of his merit or suitability for promotion to higher posts.

There may be occasions, on the other hand, when a superior officer may find it necessary to criticise adversely the work of an officer working under (e.g. point out negligence, carelessness, lack of thoroughness, delay etc.) or he may call for an explanation for some act or omission and taking all circumstance into consideration, it may be felt that, while the matter is not serious enough to justify the imposition of the formal punishment of 'censure' it calls for some informal action such as the communication of a written warning, admonition or reprimand, if the circumstances justify it, a mention may also be made of such a warning etc., in the officer's confidential roll; however, the mere fact that it is so mentioned in the character roll does not convert the warning etc. into "censure". Although such comments, remarks, warning etc., also would have the effect of making it apparent or known to the person concerned that he has done something blame-worthy and, to some extent, may also effect the assessment of his merit and suitability for promotion, they do not amount to the imposition of the penalty of 'Censure' because it was not intended that any formal punishment should be inflicted.

The fact that a mere informal 'warning' cannot be equated to a formal 'censure', should not, however, be taken as tantamount to suggestion that a written warning may be freely given without caring whether or not it is really justified. It is a matter of simple natural justice that written warnings, reprimands, etc. should not be administered or placed on an officer's confidential record unless the authority doing so is satisfied that there is good and sufficient reason to do so.

Paragraph 6 of the Home Ministry's Office Memorandum No. 51/5/54-Ests.(A) dated the 27th January, 1955 provides detailed guidance in the matter of recording adverse remarks in confidential reports. It may be reiterated here that in the

discharge of the responsible task of recording the confidential reports, every reporting officer should be conscious of the fact that it is his duty not only to make an objective assessment of his subordinates' work and qualities, but also to see that he gives to his subordinates at all times the advice, guidance and assistance to correct their faults and deficiencies. If this part of the reporting officers' duty has been properly performed there should be no difficulty about recording adverse entries because they would only refer to the defects which have persisted in spite of reporting officer's efforts to have them corrected. If after having taken such care the reporting officer finds that for the purpose of truly objective assessment mention should be made of any warning, admonition etc. issued, especially those which have not produced the desired improvement, it is his right and duty to so mention them. In process of brining the defects to the notice of person concerned, where an explanation is possible an opportunity to do so should be given. This cannot, however, be equated to formal proceedings required to be taken under Rule 55-A (now rule 16) of Rules, nor the warning given amounts to the imposition of a formal penalty.

[MHA OM No. 39/21/56-Ests.(A) dated the 13th December, 1956].

(1A) Writing of Confidential Reports – Mention of warnings therein –

There may be occasions when a superior officer may find it necessary to criticize adversely the work of an officer working under him or he may call for an explanation for some act of omission or commission and taking all circumstances into consideration, it may be felt that while the matter is not serious enough to justify the imposition of the formal punishment of censure, it calls for some formal action such as the communication of written warning, admonition or reprimand. Where such a warning/displeasure/reprimand is issued, it should be placed in the personal file of the officer concerned. At the end of the year (or period of report), the reporting authority, while writing the confidential report of the officer, may decide not to make a reference in the confidential report to the warning/displeasure/reprimand, if in the opinion of that authority, the performance of the officer reported on after the issue of the warning or displeasure or reprimand, as the case may be, has improved and has been found satisfactory. If, however, the reporting authority comes to the conclusion that despite the warning/displeasure/reprimand, the officer has not improved, it may make appropriate mention of such warning/displeasure/reprimand, as the case may be, in the relevant column in Part-III of the form of Confidential Report relating to assessment by the Reporting Officer, and , in that case, a copy of the warning/displeasure/reprimand referred to in the confidential report should be placed in the CR dossier as an annexure to the confidential report for the relevant period. The adverse remarks should also be conveyed to the officer and his representation, if any, against the same disposed of in accordance with the procedure laid down in the instructions issued in this regard.

[Deptt. of Personnel & AR OM No. 21011/1/81-Ests.(A) dated the 5th June, 1981].

(1B) Promotion to a higher Grade or post – Clarifications regarding effect of warnings etc. on promotion.

At present, administrative devices like warning, letter of caution, reprimand etc. are being used by the various administrative Ministries/Departments for cautioning the Government servants against such minor lapses as negligence, carelessness, lack of thoroughness and delay in disposal of official work with a view to toning up efficiency or maintaining discipline. These administrative actions do not, however, constitute any of the penalties specified in rule 11 of the CCS (CCA) Rules, 1965. Doubts have often been raised about the actual effect of such informal administrative actions as warning, letter of caution and reprimand on the promotion of a Government servant.

2. In this connection, the existing provisions regarding the effect of warning etc. as distinguished from Censure on promotion are reiterated and clarified as follows :-

(i) 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.

(ii) Warnings, letters 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 servants for promotion.

(iii) Where a departmental proceeding has been instituted, and it is considered that a Government servant deserves to be penalized for the offence/misconduct, one of the prescribed penalties may only be awarded and no warning recordable or otherwise, should be issued to the Government servant.

(iv) The term 'empanelment' occurring in para 1 of DOPT's O.M. No. 11012/11/2007-Estt. (A) dated 14.12.2007 relating to guidelines on grant of vigilance clearance does not cover cases of promotion. Cases of promotion of Government servants during the pendency of disciplinary proceedings would be regulated by DOPT's O.M. No. 22011/4/91-Estt. (A) dated 14.09.1992, O.M. No. 22012/1/99-Estt. (D) dated 25.10.2004 and after imposition of any of the prescribed penalties as per O.M. No. 22034/5/2004-Estt. (D) dated 15.12.2004.

3. All Ministries/Departments are, therefore, requested to keep in view the above guidelines while dealing with cases of promotion of the Government servants.

[DOPT O.M. No. 11012/6/2008-Estt. (A) dated 7th July, 2008]

(2) Departmental action for neglect of family by Government servant –

Instances of failure of Government servants to look after the proper maintenance of their families have come to Government's notice. It has been suggested that a provision may be made in the Central Civil Services (Conduct) Rules, to enable Government to take action against those Government servants who do not look after their families properly.

The question has been examined and it has been decided that it will not be possible to make such a provision in the Conduct Rules as it would entail administrative difficulties in implementing and enforcing it. However, a Government servant is expected to maintain a reasonable and decent standard of conduct in his private life and not bring discredit to his service by his misdemeanor. In cases where a Government servant is reported to have acted in a manner unbecoming of a Government servant as, for instance, by neglect of his wife and family, departmental action can be taken against him on that score without invoking any of the Conduct Rules. In this connection, a reference is invited to Rule 11 of the CCS (CCA) Rules, which specified the nature of penalties that may for good and sufficient reasons, be imposed on a Government servant. It has been held that neglect by a Government servant of his wife and family in a manner unbecoming of a Government servant may be regarded as a good and sufficient reason to justify action being taken against him under this rule.

It should, however, be noted that in such cases the party affected has legal right to claim maintenance. If any legal proceedings in this behalf should be pending in a court of law, it would not be correct for Government to take action against the Government servant on this ground as such action may be construed by the court to amount to contempt.

[MHA OM No. F.25/16/59-Ests. (A) dated the 1st September, 1959].

(3) Entry of punishments in confidential rolls :-

It has been decided that if as a result of disciplinary proceedings any of the prescribed punishments (e.g., censure, reduction to a lower post, etc.) is imposed on a Government servant, a record of the same should invariably be kept in his confidential roll.

[MHA OM No. 38/12/59-Ests.(A) dated the 23rd April, 1960].

(4) Repromotion of officers reduced in rank as a measure of penalty :-

If the order of reduction is intended for an indefinite period the order should be framed as follows :-

"A is reduced to the lower post/grade/service of X until he is found fit by the competent authority to be restored to the higher post/grade/service of Y".

In cases where it is intended that the fitness of the Government servant for re-promotion or restoration to his original position will be considered only after a specified period, the order should be made in the following form :-

"A is reduced to the lower post/grade/Service of X until he is found fit, after a period _____ years from the date of this order, to be restored to the higher post of Y."

[MHA OM No. 9/30/63-Estt.(D) dated the 7th February, 1964].

(5) Registering name with Employment Exchange for higher posts not permissible when penalty is in force :-

The Government had under consideration the question whether a Government servant on whom a penalty has been imposed can be permitted to register his name with the Employment Exchange for a higher post, when the duration of the penalty is not yet over. It has since been decided that a Government servant on whom the penalty specified in clauses (ii) and (iv) of rule 11 of the CCS (CCA) Rules, 1965 has been imposed should not be allowed to register his name with the Employment Exchange for higher posts during the period the penalty in is force.

[MHA OM No. 14/6/65-Ests.(D) dated the 22nd February, 1965].

(6) Provision in the rules of public undertaking enabling disciplinary action against direct recruits for acts committed prior to their recruitment :-

It has been recommended by the Joint Conference of the Central Bureau of Investigation and the State Anti-Corruption officers held in November, 1965, that a provision should be made in the rules of public sector undertakings which would enable them to take disciplinary action against their employees appointed through direct recruitment, for acts done by them in their previous or earlier employment. After a careful consideration of this recommendation, Government have come to the conclusion that an employer 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 the misconduct alleged is such that it renders him unfit and unsuitable for continuance in service.

Ministry of Industry etc. are requested to bring the above position to the notice of all public sector undertakings under their control and request them to make a provision in their Discipline Rules, so as to enable them to impose penalties on their employees for 'good and sufficient reasons' as in rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, if such a provision does not already exist.

[MHA OM No. 39/1/67-Ests.(A) dated the 21st February, 1967].

(7) Promotion of employees on whom any penalty has been imposed –

The Staff Side of the National Council, at its meeting held on 27th and the 28th Januaray,1971 raised the following points :-

(i) 'Censure' should not be a bar to eligibility to sit for a departmental/promotional examination or for promotion;

(ii) Where the responsibility of an employee for any loss is indirect, he should not be debarred from being considered for promotion during the period of recovery of the loss; and

(iii) A distinction should be made between stoppage of increments and reduction to a lower stage of the pay scale and in the former type of cases, the employees should not be debarred from being considered for promotion.

2. As regards the first point, under existing instructions, every person eligible for promotion and in the field of choice

has to be considered for promotion. The fact of the imposition of the minor penalty of censure on a Government servant does not by itself stand against the consideration of such person for promotion, as his fitness for the promotion has to be judged, in the case of promotion by seniority, on the basis of an overall assessment of his service record, and in the case of promotion by selection on merit, on the basis of his merit categorisation which is again based upon an overall assessment of his service record. So far as the eligibility of a Government servant who has been awarded the penalty of censure, to appear at a departmental/promotional examination is concerned, the same principles would apply, viz. that he cannot, merely because of the penalty of censure, be debarred from appearing at such an examination. In case, however, the rules of such an examination lay down that only those eligible persons can be allowed to appear at the examination who are considered to be fit for the purpose, the fitness of an eligible candidate, who has been awarded the penalty of censure, to appear at the examination has to be considered on the basis of an overall assessment of his service record and not merely on the basis of the penalty of censure.

3. As regards the other two points mentioned in paragraph 1 above, while it is not possible to lay down any hard and fast rules in this regard, and it is for the competent authority to take a decision in each case having regard to its facts and circumstances, it is considered necessary to reiterate the existing instructions on the subject. Recovery from the pay of a Government servant of the whole or part of any pecuniary loss caused by him to Government by negligence or breach of orders, or withholding of increments of pay, are also minor penalties laid down in rule 11 of the CCS (CCA) Rules. As in the case of promotion of a Government servant, who has been awarded the penalty of censure, the penalty of recovery from his pay of the loss caused by him to Government or of withholding his increment(s) does not stand in the way of his consideration for promotion though in the latter case promotion is not given effect to during the currency of the penalty. While, therefore, the fact of the imposition of such a penalty does not by itself debar the Government servant concerned from being considered for promotion, it is also taken into account by the Departmental Promotion Committee, or the competent authority, as the case may be, in the overall assessment of his service record for judging his suitability or otherwise for promotion or his fitness for admission to a departmental/promotional examination (where fitness of the candidates is a condition precedent to such admission).

[Cabinet Sectt.(Department of Personnel) OM No. 21/5/70-Ests.(A) dated the 15th May, 1971].

(7A)

The attention of the Ministry of Finance etc. is invited to MHA OM No. 39/3/59-Estt.(A) dated 31.08.1960, OM No. 7/28/63-Estt.(A) dated 22.12.1964 and OM No. 22011/3/77-Estt.(A) dated 14.07.1977 [since revised and consolidated vide OM No. 22011/4/91-Estt.(A) dated 14.09.1992] which lay down the guide-lines for following the 'sealed cover' procedure and for granting benefits with retrospective effect on the "complete exoneration" of the official concerned. The scope of the term "complete exoneration" was very wide, resulting in denial of benefits even to those who had not been awarded any of the prescribed penalties as a result of disciplinary proceedings but were only issued a warning. There is also in vogue the practice of issuing "recordable warning" to Government employees which affect their career prospects. The matter has, therefore, been examined carefully and the following decisions have been taken :-

(i) As clarified in the Ministry of Home Affairs OM No. 39/21/56-Estt.(A) dated 13.12.1956, warning is administered by any authority superior to a Government employee in the event of minor lapses like negligence, carelessness, lack of thoroughness, 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 constitutes an adverse entry and the officer so warned will have the right to represent against the same in accordance with the existing instruction relating to communication of adverse remarks and consideration of representations against them.

(ii) Where a departmental proceeding has been completed and it is considered that the officer concerned deserves to be penalised, he should be awarded one of the recognised statutory penalties as given in Rule 11 of the CCS (CCA) Rules, 1965. In such a situation, a recordable warning should not be issued as it would for all practical purposes, amount to a "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 CR

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 attached to the officer concerned which necessitates cognizance of such fact the disciplinary authority should award the penalty of "censure" at least. If the intention 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 warnings or even warnings in writing which do not form part of the character roll.

(iii) Where the departmental proceedings have ended with the imposition of a minor penalty, viz, censure, recovery of pecuniary loss to the Government, withholding of increments of pay and withholding of promotion, the recommendation of the DPC in favour of the employee, kept in the sealed cover, will not be given effect to. But the case of the employee concerned for promotion/confirmation may be considered by the next DPC when it meets after the conclusion of the departmental proceedings. If the findings of the DPC are in favour of the employee, he may be promoted in his turn if the penalty is that of "censure" or "recovery of pecuniary loss caused to the Government by negligence or breach of orders", In the case of employees who have been awarded the minor penalty of "withholding of increments" or "withholding of promotion" promotion can be made only after the expiry of the penalty.

(iv) If a recordable warning has been issued to an officer as a result of disciplinary proceedings before the issue of this Office Memorandum and the case of the officer concerned for promotion is still under consideration, he should be treated as having been "censured". The officer will also have the right of representation against such warning and such representation shall be dealt with by the competent authority as if it were an appeal under the relevant disciplinary rules.

[Deptt. of Peronnel & A.R. O.M. No. 22011/2/78-Estt.(A) dated the 16th February, 1979]

(8) Scope of penalty of reduction in rank-Supreme Court judgment in cases of Shri Nayadar Singh & Shri M.J. Ninama Vs. Union of India (Civil Appeal No. 3003 of 1988 and 889 of 1988) :-

Clause (vi) of Rule 11, which enumerates the penalties that may be imposed on a Government servant after following the prescribed procedure, provides as under :-

"(vi) reduction to a lower time-scale of pay, grade, post or Service which shall ordinarily be a bar to the promotion of the Government servant, to the time scale of pay, grade, post or Service from which he was reduced with or without further directions regarding conditions of the restoration to the grade or post or Service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service."

2. The judgment cited above 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, disciplinary authority had imposed a penalty of reduction in rank reducing an officer from the post of Assistant Locust Warning 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 post which he never held before.

3. The rulings given by the Supreme Court in the above cases may be kept in view by all disciplinary authorities while deciding cases in future. However, past cases need not be reopened in the light of the aforesaid judgment.

[Deptt. of Pers. & Trg. OM No. 11012/2/88-Estts. Dated 02.02.89]

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

A new clause (iii a) was inserted in Rule 11 of CCS (CCA) Rules, 1965 vide this Department's notification No. 11012/4/86-Estt.(A) dated 13.07.1990. As a result, reduction to a lower stage in the time scale of pay for a period not

exceeding three years, without cumulative effect and not adversely affecting the pension of the Government servant who has been punished, was introduced as another minor penalty.

2. A doubt has been raised that the minor penalty introduced vide clause (iii a) is also covered under clause (v) of Rule 11 and, therefore, can in some circumstances be treated as a major penalty. It is clarified that since the penalty to the extent mentioned in clause (iiia) of Rule 11 has been carved out of clause (v) of Rule 11 specifically, it does not constitute a major penalty under clause (v) of Rule 11. To ensure that this is clear, clause (v) of Rule 11 is being amended and a notification is being issued separately.

[Deptt. of Pers. & Trg. OM No. 11012/4/86-Estt.(A) dated 28.05.92]

(10) Action against Government servants to be taken if they are later found ineligible or unqualified for their initial recruitment -

Attention of the Ministries/Departments is invited to Ministry of Home Affairs OM No. 39/1/67-Ests.(A) dated 21.02.1967 wherein it was clarified that departmental action can be taken against Government servant in respect of misconduct committed before his employment. Attention is also invited to the Ministry of Home Affairs OM No. 5/1/63-Estt. (D) dated 30.04.1965 wherein Ministries/Departments were requested to make use of the provision of 'warning' inserted in the Attestation Form for taking action against Government servant furnishing false information at the time of appointment.

2. A question has now 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 judgment 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 disregard of the same, it is not a matter only 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."

The matter has been examined in consultation with the Ministry of Law and Justice and it has now been decided that wherever it is found that a Government servant, 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 Government servant, he should be discharged or his services should be terminated. If he has become a permanent Government servant, an inquiry as prescribed in Rule 14 of CCS (CCA) Rules, 1965 may be held and if the charges are proved, the Government servant should be removed or dismissed from service. In no circumstances should any other penalty be imposed.

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

[Deptt. Of Personnel & Training OM No. 11012/7/91-Estt. (A) dated 19.05.1993]

(11) Rule 11 (iii) of the CCS (CCA) Rules, 1965 – Recovery of pecuniary loss caused by a Government servant – Clarifications –

References are being received in this Department seeking clarification whether the instructions contained in DGP&T Letter No. 3/312/70-Disc-I dated 17.08.1971 are applicable to Government servants serving in other Ministries/Departments also.

2. The DGP&T's instructions mentioned above 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.

3. The matter has been examined in consultation with the Ministry of Law. It was observed that the 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 discovered.

[Deptt. Of Personnel & Training OM No. 11012/1/2000-Estt. (A), dated 6th September, 2000]

(12) Imposition of penalty of reduction to a lower time scale of pay, grade, post or service –

Clause (vi) of rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 provides for the imposition on a Government servant of a penalty of reduction to lower time scale of pay, grade, post or Service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or Service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government servant was reduced, and his seniority and pay on such restoration to that grade, post or Service.

2. The Staff side of the National Council (JCM) has made a request that the penalty of reduction to lower time scale of pay in the said clause (vi) should not be imposed on the Charged Officer on a permanent basis on the ground that it is harsh and does not allow the employee to be promoted to the next grade even if he improves his working and the Competent Authority later finds him fit for promotion. The Staff Side has suggested that the penalty in question should be for a specified time-period with clear directions regarding restoration to the higher grade.

3. The existing rule position is that the imposition of the penalty of reduction to a lower grade, post or service is normally a bar to the promotion to a higher grade, post or service (from which he was reduced) unless the conditions of restoration are specified. It is open to the Disciplinary Authority to prescribe the conditions of restoration to the higher grade in deserving cases.

4. 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 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 which he was reduced and his seniority and pay on such restoration and 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.

5. 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 of 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.

[DOPT OM No. 11012/2/2005-Estt. (A), dated 14th May, 2007]

12. Disciplinary Authorities

(1) The President may impose any of the penalties specified in Rule 11 on any Government servant.

(2) Without prejudice to the provisions of sub-rule (1), but subject to the provisions of sub-rule (4), any of the penalties specified in Rule 11 may be imposed on -

(a) a member of a Central Civil Service other than the General Central Service, by the appointing authority or the authority specified in the schedule in this behalf or by any other authority empowered in this behalf by a general or special order of the President;

(b) a person appointed to a Central Civil Post included in the General Central Service, by the authority specified in this behalf by a general or special order of the President or, where no such order has been made, by the appointing authority or the authority specified in the Schedule in this behalf.

(3) Subject to the provisions of sub-rule (4), the power to impose any of the penalties specified in Rule 11 may also be exercised, in the case of a member of a Central Civil Services, Group 'C' (other than the Central Secretariat Clerical Service), or a Central Civil Service, Group 'D' ,-

(a) if he is serving in a Ministry or Department of the Government of India, by the Secretary to the Government of India in that Ministry or Department, or

(b) if he is serving in any office, by the head of that office, except where the head of that office is lower in rank than the authority competent to impose the penalty under sub-rule (2).

(4) Notwithstanding anything contained in this rule -

(a) except where the penalty specified in clause (v) or clause (vi) of Rule 11 is imposed by the Comptroller and Auditor-General on a member of the Indian Audit and Accounts Service, no penalty specified in clause (v) to (ix) of that rule shall be imposed by any authority subordinate to the appointing authority;

(b) where a Government servant who is a member of a Service other than the General Central Service or who has been substantively appointed to any civil post in the General Central Service, is temporarily appointed to any other Service or post, the authority competent to impose on such Government servant any of the penalties specified in clauses (v) to (ix) of Rule 11 shall not impose any such penalties unless it has consulted such authority, not being an authority subordinate to it, as would have been competent under sub-rule (2) to impose on the Government servant any of the said penalties had he not been appointed to such other Service or post;

(c) in respect of a probationer undergoing training at the Lal Bahadur Shastri National Academy of Administration, the Director of the said Academy shall be the authority competent to impose on such probationer any of the penalties specified in clauses (i) and (iii) of rule 11 after observing the procedure laid down in rule 16.

EXPLANATION I. For the purposes of clause (c), 'probationer' means a person appointed to a Central

Civil Service on probation.

EXPLANATION II. Where a Government servant belonging to a Service or holding a Central Civil post of any Group, is promoted, whether on probation or temporarily to the Service or Central Civil post of the next higher Group, he shall be deemed for the purposes of this rule to belong to the Service of, or hold the Central Civil post of, such higher Group.

Government of India's decision :

(1) Officers performing current duties of a post cannot exercise Statutory powers under the Rules :-

An officer appointed to perform the current duties of an appointment can exercise administrative or financial power vested in the full-fledged incumbent of the post but he cannot exercise statutory powers, whether those powers are derived direct from an Act of Parliament (e.g. Income Tax Act) or Rules, Regulations and Bye-Laws made under various Articles of the Constitution (e.g., Fundamental Rules, Classification, Control and Appeal Rules, Civil Service Regulations, Delegation of Financial Powers Rules etc.)

[MHA OM No. 7/14/61-Ests. (A) dated 24th January, 1963].

(2) Powers delegated to Chief Commissioner, Andaman & Nicobar Islands :-

In pursuance of sub-rule (2) of rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 the President empowers under clause (a) of, and specifies under clause (b) of, that sub-rule the Chief Commissioner, Andaman and Nicobar Islands, for the purpose of imposition of the penalties specified in clause (i), clause (ii) and clause (iii) of rule 11 of the said rules on :-

(a) any member of Central Civil Service Class I, other than the General Central Service.

(b) any person appointed to a Central Civil Post Class I included in the General Central Service serving under the Andaman and Nicobar Islands Administration.

[MHA Memo No. F.7/16/64-Ests.(A) dated the 30th may, 1964].

(3) Clarification about rules 12, 14 etc.

Several points relating to rules 12, 14, 15 and 29 of CCS (CCA) Rules, 1965, are being frequently referred to Home Ministry for clarification. These points are indicated below and the clarification given against each.

	Points raised	Classification
1.	(a) In cases where the disciplinary authority is the President, whether the case should be shown to the Minister before disciplinary proceedings are initiated.	(a) Having regard to the Transaction of Business Rules, it is necessary that in cases where the disciplinary authority is the President, the initiation of the disciplinary proceedings should be approved by the Minister.
	(b) Whether it is necessary to show the file to the Minister every time before formal orders are issued in the name of the President, under Rules 14 (2), 14(4), 14(5) etc. of the CCS (CCA) Rules?	(b) It would be sufficient if Minister's orders are obtained for taking action ancilliary to the issue of the charge sheet at the stage when the papers are put up to him for initiation of disciplinary proceedings. However formal orders of the Minister should be obtained at the stage of show cause notice under Rule 15 (4) (i) (b) and at the stage of issuing final orders imposing penalty under Rule 15 (4) (iii).
2.	What happens to the disciplinary proceedings started by a disciplinary	In such cases it is not necessary for disciplinary authority (B) to start de novo proceedings by framing

authority (A) in respect of a Government servant when the latter is transferred to the jurisdiction of another disciplinary authority (B) even though the said Government servant continues to be in the same service?	and delivering fresh articles of charge to the concerned official. He can carry on with the enquiry proceedings at the point where the transfer of the accused Officer was effected. If, however, the accused official is transferred to another service then the procedure laid down in Rule 12 (4) (b) of the CCS (CCA) Rules will have to be followed.

[MHA Memo No. F.39/1/69-Ests.(A) dated the 16th April, 1969]

13. Authority to institute proceedings

(1) The President or any other authority empowered by him by general or special order may -

(a) institute disciplinary proceedings against any Government servant;

(b) direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is competent to impose under these rules any of the penalties specified in rule 11.

(2) A disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in clauses (v) to (ix) of rule 11 notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties.

PART VI

PROCEDURE FOR IMPOSING PENALTIES

14. Procedure for imposing major penalties

(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour 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 harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules.

EXPLANATION - 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.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the

disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(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 sub-rule (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.

(6) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority-

(i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(ii) a copy of the written statement of the defence, if any, submitted by the Government servant;

(iii) a copy of the statements of witnesses, if any, referred to in sub-rule (3);

(iv) evidence proving the delivery of the documents referred to in sub-rule (3) to the Government servant; and

(v) a copy of the order appointing the "Presenting Officer".

(7) The Government servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by the inquiring authority of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by notice in writing, specify, in this behalf, or within such further time, not exceeding ten days, as the inquiring authority may allow.

(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.

(9) If the Government servant who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and it he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the Government servant thereon.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the government servant pleads guilty.

(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.

(12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are

kept, with a requisition for the production of the documents by such date as may be specified in such requisition :

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition referred to in sub-rule (12), every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the Government servant and withdraw the requisition made by it for the production or discovery of such documents.

(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 re-examine 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.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary, in the interests of justice.

NOTE.- New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(16) When the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(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.

(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.

(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.

(21)(a) Where a disciplinary authority competent to impose any of the penalties specified in clause (i) to (iv) of rule 11 (but not competent to impose any of the penalties specified in clauses (v) to (ix) of rule 11), has itself inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (v) to (ix) of rule 11 should be imposed on the Government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witness and examine, cross-examine and re-examine the witness and may impose on the Government servant such penalty as it may deem fit in accordance with these rules.

(22) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

(23)(i) After the conclusion of the inquiry, a report shall be prepared and it shall contain-

(a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(b) the defence of the Government servant in respect of each article of charge;

(c) an assessment of the evidence in respect of each article of charge;

(d) the findings on each article of charge and the reasons therefor.

EXPLANATION- If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include :-

(a) the report prepared by it under clause (i).

(b) the written statement of defence, if any, submitted by the Government servant;

(c) the oral and documentary evidence produced in the course of the inquiry;

(d) written briefs, if any, filed by the Presenting Officer or the Government servant or both during the course of the inquiry; and

(e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

Government of India's decisions :

(1) Instructions to avoid procedural delays in the disposal discipline cases :-

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

2. After careful consideration the Ministry of Home Affairs have come to the conclusion that this impression is not wholly justified. The procedure prescribed in Rule 14 of the CCS (CCA) Rules is applicable only to cases in which the charges are so serious as to call for one of the major punishments, i.e., Dismissal, Removal or Reduction in the rank etc. (A mere summary procedure is already available for less serious cases). The provisions of Rule 14 ibid are merely designed to ensure compliance, with a salutary principle of justice and public policy which has also been incorporated in Article 311 of the Constitution of India viz., that no man should be condemned or punished without a reasonable opportunity to defend himself. The prescribed procedure therefore requires that the accused officer should be told in the form of written charges exactly what he is alleged to have done and on what evidence, oral or documentary, the allegations are based that he should have an opportunity to inspect the documentary evidence, to test the oral evidence by cross-examination and to furnish such evidence as he may wish to adduce in his own defence. If, as a result of the inquiry, it is decided that the officer should be dismissed, removed or reduced in rank, he has to be given a further opportunity to show cause, if any, against the actual punishment propose. Anything less than this would amount to denial of the reasonable opportunity which is guaranteed by Article 311.

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

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

(i) Officer conducting the departmental inquiries may be so preoccupied with other duties that they can only spare a few hours at a time at long intervals for the inquiry itself.

(ii) Unfamiliarity with the procedure or inadequate appreciation of the difference between a departmental inquiry and a trial in a Criminal Court, may lead to over-elaboration, or lack of firmness in dealing with dilatory tactics.

(iii) Avoidable delay may sometimes occur at the stage when the inquiry officer has submitted his report and the appropriate authorities have to make up their minds whether the findings are to be accepted and if so what the punishment should be.

(iv) Where, under the rules, consultation with the Union Public Service Commission is necessary some undue delay may occur in making the reference to the Commission, and in the consideration of the case by that body.

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

(i) In each Ministry or Department a specified officer or officers of appropriate rank shall be nominated and ear-marked for the purpose of conducting all the departmental inquiries arising within that Ministry/Department.

(ii) As soon as occasion arises for taking up such an inquiry the nominated officer will be relieved of his normal duties to such extent as may be necessary to enable him to devote full and careful attention to the completion of the inquiries and the submission of his report. During this time the work of which the officer is relieved may be distributed amongst other officers.

(iii) The nominated officers should familiarize themselves with the rules and essential procedural requirements and appreciate the difference between Departmental inquiries and trials in the Criminal Courts. The maintenance of close personal contact with the Ministry of Home Affairs will enable them quickly to resolve any doubts or difficulties which may arise.

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

[MHA OM No. 39/40/52-Est., dated the 4th October, 1952.]

(2) Pay Commission's recommendations regarding disciplinary proceedings and Government's order thereon :-

In chapter LI of their report the Pay Commission have made the following recommendations regarding disciplinary proceedings :-

(i) All memorials etc. as well as appeals which come to the Central Government against imposition of major penalties, should be disposed of only in consultation with the Public Service Commission.

(ii) The power to withhold appeals, memorials or petitions under prescribed circumstances should be exercised by an authority higher than the one which has passed the orders against which the appeal etc., is made.

(iii) A disciplinary enquiry should not be conducted by the immediate superior of the Government servant being proceeded against or by an officer at whose instance the inquiry was initiated.

These recommendations have been carefully examined by Government and the conclusion reached are contained in the following paragraphs.

2. The Government of India note that the Pay Commission have observed that the information available with them does not at all suggest that disciplinary action is taken in far too many cases or that major penalties imposed too freely or that appeals and memorials are dealt with perfunctorily. It is considered that the acceptance of recommendation at (i) above would considerably increase the work of the Union Public Service Commission. It may also lead to delays in completing disciplinary cases, which would neither be in the interest of public service nor in that of the individual Government servant. It has, therefore, been decided not to make any change in the existing procedure.

3. As regards recommendation under (ii), the instructions contained in MHA OM No. 40/5/50-Ests.(B), dated 8th September, 1954 lay down the procedure for submission of petitions, memorials etc., to the President. In these instructions

the power to withhold petitions etc. has been granted only to high authorities like the Secretaries to the Government and the Head of Departments. An appeal can be withheld only under prescribed circumstances; the appellant is required to be informed of the fact and the reasons for withholding the appeal are required to be communicated to the appellate authority and quarterly return giving the list of withheld appeals has to be submitted to the appellate authority. These are sufficient safeguards against unjustified withholding of appeals.

It is considered that these instructions and rules do not require any modification. The authorities dealing with petitions, memorials and appeals are, however, expected to apply the instructions and rules in a liberal spirit and they should ordinarily refrain from withholding any appeal, representation, petition or memorial except in rare cases where the justification for contrary action may be obvious.

4. As regards recommendation (iii), it is obviously desirable that 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 Inquiry Officer is appointed in a disciplinary case.

[MHA OM No. F.6(26)/60-Ests.(A) dated the 16th February, 1961.]

(3) Supply of copies of documents to the delinquent official :-

A question often arises whether a particular document or set of documents asked for by a Government servant involved in a departmental inquiry should be made available to him or not; and pending the decision of the question the submission of the written statement by the Government servant concerned is delayed, in some cases for months. In view of this and also of the judgement pronounced by the Supreme Court in Raizada Trilok Nath Vs. the Union of India in which it has been 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, the whole question of the extent of access to official records to which a Government servant is entitled under sub-rule 4 of Rule 5 of the All India Services (Discipline & Appeal) Rules or sub-rule 3 of Rule 15 of the Central civil Services (Classification, Control and Appeal) Rules has been examined in consultation with the Ministry of Law.

2. 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 invariable be recorded in writing.

3. 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) statement of witnesses recorded in the course of –

(a) a preliminary enquiry conducted by the department; or

(b) 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.

4. 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 alongwith 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.

5. 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 2 above.

6. 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 item 4 and 5 in para 3 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 is not made in the statement of allegation. 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).

7. 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 recognizes 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 statement.

8. 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 statements of allegation. 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 3 above before he files a written statement, the request shall be acceded to.

9. Neither sub-rule (4) of Rule 5 of All India Services (Discipline and Appeal) Rules nor sub-rule (3) of Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules provide for supply of copies of documents. Therefore, 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 given, 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 charge depends upon the proof of the handwriting 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 extract therefrom as is provided for in sub-rule (3) of Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules. Sub-rule (4) of Rule 5 of the All India Services (Discipline and Appeal) Rules does not specifically provide for the Government servant taking extract from official records. The practice, however, is that officers governed by the All India Services (Discipline and Appeal) Rules do take such extracts from records. This practice should be continued and no restriction should be placed on such officials from taking extracts from official records.

[MHA OM No. 30/5/61-AVD dated the 25th August, 1961]

(4) Examination of witnesses on behalf of the accused official :-

The Government servant who has been permitted to assist the accused official should be permitted to examine, corss-examine and re-examine witnesses and make submissions before the Inquiry Officer on behalf of the accused official, if the accused official makes a request in writing in this behalf.

[MHA OM No. 6/26/60-Ests. Dated the 8th June, 1962]

(5) Prosecution or departmental action according to seriousness of the offence :-

Prosecution should be general rule in all those cases which are found fit to be sent to Court after investigation and in which the offences are of bribery, corruption or other criminal misconduct involving loss of substantial public funds. In such cases, departmental action should not precede prosecution. In other cases involving less serious offences or involving malpractices of a departmental nature, departmental action only should be taken and the question of prosecution should generally not arise. Whenever, however, there is unresolved difference of opinion between the Central Bureau of Investigation and the administrative authority concerned as to whether prosecution in court or departmental action should be resorted to in the first instance the matter should be referred to the Central Vigilance Commission for advice.

[MHA OM No. 39/8/64-Ests.(A) dated the 4th September, 1964].

(6) Measures to prevent tampering with records/documents during inspection by delinquent officials :-

A delinquent official against whom disciplinary proceedings are pending under CCS (CCA) Rules, is entitled to the inspection of records/documents etc. having a bearing on the case. On requisition by the disciplinary authority, the CBI has to hand over the documents to him for purposes of perusal and inspection by the delinquent official. Recently instances have come to notice where the accused officers while inspecting the records/documents, tampered with materially vital

documents. In other case, the accused officer tempered with the documents when the Inquiry Officer temporarily left the inquiry room during the course of the inquiry.

In order to obviate recurrence of such incidents Ministries/Departments are requested to consider the desirability of issuing instructions to the following effect :-

(i) that the accused officer should be allowed inspection of records/documents, etc. only in the presence of a responsible officer; and

(ii) that the inquiry officer should take sufficient precautions to ensure that the records/documents and other papers are not tampered with while the documents are under their custody or during the course of actual inquiry.

[MHA OM No. 242/96/65-AVD dated the 27th September, 1965, addressed to the Vigilance Officers of all Ministries/Departments].

(7) Assisting Government servants :-

Rule 14 (8) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 provides that the Government servant against whom disciplinary proceedings have been initiated may take the assistance of any other Government servant to present the case on his behalf. While no permission is needed by the official who is chargesheeted to secure the assistance of any other Government servant, it is necessary for the latter to obtain the permission of his controlling authority to absent himself from office in order to assist the accused Government servant during the enquiry. It would avoid delay in granting such permission, if the Inquiry Officers take the initiative in the matter of informing the controlling authority in this regard. It is, therefore, suggested that as soon as an accused Government servant informs the Inquiry Officer of the name and other particulars of the Government servant who has been chosen by him to assist in the presentation of his case, the Inquiry Officer should intimate this fact to the controlling authority of the Government servant concerned. Further, the date and time of the hearing should be intimated to the said controlling authority sufficiently in advance adding that if, for any compelling reason it is not practicable to relieve the Government servant concerned on the due date or dates to attend the enquiry, the Inquiry Officer, the accused official and the Government servant chosen for assisting the accused official may be advised well in time.

2. It is requested that necessary action may please be taken to ensure that all Inquiry Officers follow the procedure outlined above. A copy of the circular is also being endorsed to the Commissioners for Departmental Enquiries.

[CVC Letter No. 61/3/67-C dated the 8th January, 1968].

(8) Cross-examination by or on behalf of the Government servant after the presenting officer has re-examined the witness –

Clarification regarding :- Under sub-rule (14) of Rule 14 of the CCS (CCA) Rules, 1965, the witness 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 servant, and the presenting officer would also be entitled to re-examine the witnesses on any point on which they have been cross-examined but not on any new matter without the 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 witness. It is hereby clarified that if re-examination by the presenting officer is followed 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 nature justice.

[Cabinet Sectt. (Department of Personnel) Memo. No. 7/11/70-Estt. (A) dated the 24th September, 1970].

(9) Conduct of enquiries against delinquent officers by gazetted officers/senior officers :-

The Committee on Sub-ordinate Legislation (Fourth Lok Sabha) have recently examined the question of inquiry officers to

conduct oral inquiry into the charges levelled against delinquent officers under CCS (CCA) Rules, 1965. The Committee has observed that though they agree that it may not be possible to entrust always inquiries against delinquent officers to gazetted 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.

[Cabinet Sectt. (Department of Personnel) Memo No. 7/1/70-Estts. (A) dated the 6th January, 1971].

(10) Appointment of Inquiring Authority :-

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

2. As regards the point raised by the Staff Side that the Departmental Inquiry should be entrusted to an independent impartial body or tribunal, it was clarified that inquiries in disciplinary proceedings against gazetted officers of all grades involving lack of integrity or an element of vigilance are alone entrusted to Commissioner for Departmental Inquiries under the Central Vigilance Commission and other cases of disciplinary proceedings involving purely 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) OM No. 6/26/60-Ests. (A) dated 16th February, 1961 already emphasise the desirability of only disinterested officers being appointed as Inquiry Officers in departmental proceedings. It is also provided therein that while there is no bar to the immediate superior officer holding an inquiry, as a rule, persons who undertake this task should not be suspected of any bias in such cases and that the authorities concerned should bear this in mind before an Inquiry Officer is appointed in a disciplinary case.

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

4. It has accordingly been decided that whenever an application is moved by a Government servant against whom disciplinary proceedings are initiated under the CCS (CCA) Rules against the inquiry officer on grounds of bias, the proceedings should be stayed and the application referred, alongwith the relevant material, to the appropriate reviewing authority for considering the application and passing appropriate orders thereon. It has also been decided to re-emphasize to all Ministries/Departments the following instructions contained in paragraph, 5 of MHA OM No. 39/40/52-Ests. dated the 4th October, 1955 on the subject for expeditious and better disposal of departmental proceedings against Government servants :-

(i) In each Ministry or Department specified officer or officers of appropriate rank shall be nominated and

earmarked for the purpose of conducting all the departmental inquiries arising within that Ministry/Department.

(ii) As soon as occasion arises for taking up such an inquiry, the nominated officer will be relieved of his normal duties to such extent as may be necessary to enable him to devote full and careful attention to the completion of the enquiries and the submission of his report. During this time the work of which the officer is relieved may be distributed amongst other officers.

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

[Cabinet Sectt. Department of Personnel, OM No. 39/40/70-Ests.(A) dated 9th November, 1972].

(11) Inquiry by the disciplinary authority :-

The Department of Personnel & Administrative Reforms OM No. 39/40/70-Estt.(A) dated the 9th November, 1972, inter-alia, provides that only those Inquiry Officers who are free from bias should be appointed by the disciplinary authority to conduct departmental inquiries. It is, further been provided that wherever an application is moved by a Government servant, against whom disciplinary proceedings are initiated, against the Inquiry Officer on grounds of bias, the proceedings should be stayed and the application referred to the appropriate reviewing authority for considering the matter and passing appropriate orders thereon. In this connection, the Staff Side raised the following points, at the National Council (JCM) meeting held in November, 1975 :

(a) The orders contained in the Department of Personnel & AR OM dated 9th November, 1972 are not being implemented in some Departments; and

(b) The OM dated 9.11.1972 did not contain instructions regarding disciplinary authority inquiring into the cases itself.

2. Regarding (a) above, Ministry of Finance etc. are requested to observe and implement scrupulously the aforesaid instructions contained in this Department's OM of 9th November, 1972.

3. The second point raised by the Staff Side has been further examined in this Department. 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.

[Deptt. of Personnel & AR OM No. 35014/1/76-Ests. (A) dated the 29th July, 1976].

(12) Whether charges can be dropped at the stage of initial written statement of defence :-

A question has been under consideration whether Rule 14 (5) (a) of the CCS (CCA) Rules, 1965 permits the dropping of charges by the disciplinary authority after considering the written statement of defence submitted by the accused Government servant under Rule 14 (4) ibid. The question has been considered in consultation with the Ministry of Law and the position is clarified as under :-

(a) The disciplinary authority has the inherent power to review and modify the articles of charge or drop some of the charges or all the charges after the receipt and examination of the written statement of defence submitted by the accused Government servant under Rule 14 (4) of the CCS (CCA) Rules, 1965.

(b) The disciplinary authority is not bound to appoint an Inquiry Officer for conducting an inquiry into the charges which are not admitted by the accused official but about which the disciplinary authority is satisfied on the basis of the written statement of defence that there is no further cause to proceed with.

2. It may, however, be noted that the exercise of powers to drop the charges after the consideration of the written statement of defence by the accused Government servant will be subject to the following conditions :-

(a) In cases arising out of investigations by the Central Bureau of Investigation, the CBI should be consulted before a decision is taken to drop any of, or all the charges on the basis of the written statement of defence submitted by the accused Government servant. The reasons recorded by the disciplinary authority for dropping the charges should also be intimated to the Central Bureau of Investigation.

(b) The Central Vigilance Commission should be consulted where the disciplinary proceedings were initiated on the advice of the Commission and the intention is to drop or modify any of, or all the charges on the basis of the written statement of defence submitted by the accused Government servant.

[G.I., MHA OM No. 11012/2/79-Estt.(A) dated the 12th March, 1981 and OM No. 11012/8/82-Estt.(A) dated the 8th December, 1982]

(13) Permission to engage a Legal Practitioner :-

Rules 14 (8) (a) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 provides, inter-alia that a delinquent Government servant against whom disciplinary proceedings have been instituted as for imposition of a major penalty may not engage a legal practitioner to present the case on his behalf before the Inquiring Authority, 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. It is clarified, that, 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 practitioner. 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.

[Deptt. of Personnel & AR OM No. 11012/7/83-Estt.(A) dated the 23rd July, 1984].

(14) Restriction on engaging Defence Assistant :-

Sub-rule (8) of Rule 14 of CCS (CCA) Rules, 1965 provides that a Government servant may take the assistance of any of the Government servants posted in any office either at his headquarters or at the place where the inquiry is held, to present his case on his behalf. A Government servant may, however, take the assistance of any other Government servant posted at any other station on being permitted by the Inquiring Authority to do so.

2. The Staff Side of the National Council (JCM) represented that the aforesaid provision in the rules was restrictive, amounting the denial of justice, and should therefore, be removed. The matter was also discussed in 28th Ordinary Meeting of the National Council held on 14th/15th January, 1986.

3. Rule 14 (8) of CCS (CCA) Rules, 1965 does not totally prohibit having a Defence Assistant from any station other than the headquarters of the charged Government servant or the place of inquiry. It is open to the inquiring authority to permit the appointment of a Defence Assistant from any other station, having regard to the circumstances of each case. However, at present, there is no provision for appeal against the decision of the inquiring authority in the matter, should it decide to refuse permission.

4. It has, therefore, been decided after discussion with the Staff Side, that a Government 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 Government servant or the place of inquiry. Accordingly, in all cases where the inquiring authority rejects the request of the charged Government servant for engaging a defence assistant, from any station other than the headquarters of such Government servant or the place where the inquiry is conducted, it should record its reasons in writing and communicate the same to the charged Government 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 Government 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.

[Department of Personnel & Training OM No. 11012/3/86-Estt.(A) dated the 29th April, 1986].

(15) Appearance of a Government servant before the inquiry authority – Clarification of the import of the provisions in Rule 14 (7) of the CCS (CCA) Rules, 1965 –

The procedure for imposing major penalties is laid down in Rule 14 of the CCS (CCA) Rules, 1965 and sub-rule (7) thereof envisages that the Government servant shall appear in person before the inquiring authority on such day and at such time within 10 working days from the date of receipt by him of the articles of charge and the statement of the imputations of misconduct and misbehaviour, as the inquiring authority may, by notice in writing, specify, in this behalf, or within such further time, not exceeding 10 days, as the inquiring authority may allow. A point has been raised by the Staff Side in the National Council (JCM) that the provisions of the above cited sub-rule are followed more in breach than in observance since inquiry officers are not generally appointed within a short period of serving of articles of charge on the Government servant, hence it is not possible for the Government servant appear before the Inquiry Officer within 10 days of receipt of the articles of charge.

2. It is hereby clarified that the provisions in sub-rule (7) should be read in conjunction with the provisions in the preceding sub-rule (6), according to which the disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority various documents including articles of charge and statement of imputations of misconduct or misbehaviour. The requirement of the Government servant appearing in person before the inquiring authority, on such day and at such time within 10 working days, as laid down in sub-rule (7) is actually with reference to the date of receipt by the inquiring authority (and not the Government servant) of the articles of charge and the statement of the imputations of misconduct or misbehaviour. The need for expeditiously appointing an inquiring authority, wherever necessary, cannot, however, be over-emphasised.

[Deptt. Of Personnel & Training's OM No. 35034/7/92-Estt. (A), dated 28th December, 1993.]

(16) Retired Government servants appearing as defence assistants – conditions regarding.

The staff side in the National Council (JCM) had made a demand for enhancing the ceiling on the number of cases a retired Government servant can take up as Defence Assistant. In the light of the discussion in the meeting of the National Council in this regard, it has been decided to raise the limit of cases from five to seven. Hence in supersession of the earlier order on the subject, it has been decided in terms of rule 14 (8) (b) of the CCS (CCA) Rules, 1965 that 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 five cases at hand including the case in question.

[Deptt. of Personnel & Training OM No. 11012/11/2002-Ests. (A) dated 05.02.2003].

(17) Simultaneous action of prosecution in a court and initiation of departmental proceedings -

The M.H.A. O.M. No. 39/30/54-Ests. dated the 7th June, 1955 and No. 39/8/64-Ests. dated the 4th September, 1964, state that prosecution should be the general rule in all cases which are found fit to be sent to Court and in which the offences are of bribery, corruption or other criminal misconduct involving loss of substantial public funds and that in such cases, departmental action should not precede prosecution. References are being received in this Department seeking clarification as to whether departmental action can also be taken, where the same matter has been taken up in a court of competent jurisdiction for prosecution of the Government servant concerned.

2. What may be deduced from the above instructions is that 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.

3. However, if the charge in the criminal case is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. This will depend upon the nature of offence and the evidence and material collected against the Government servant during investigation or as reflected in the charge-sheet. If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were kept pending on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty, his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest, if the case so warrants.

4. 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." The apex court has referred to the conclusions given in Para 22 of Captain M. Paul Anthony's case.

5. It is, therefore, clarified that stay of disciplinary proceedings is not a must in every case, where there is a criminal trial on the very same charges and the concerned authority may decide on proceeding with the departmental proceedings after taking into consideration the facts and circumstances of each case and the guidelines given by the Hon'ble Supreme Court, as mentioned in the preceding paragraphs.

[DOPT OM No. 11012/6/2007-Estt. (A), dated 1st August, 2007]

15. Action on inquiry report

(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

(2) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, 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 to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

(2A) The disciplinary authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in rule 16, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses (v) to (ix) of rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed :

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant.

Government of India's Decisions

(1) Final orders to be passed by the 'higher disciplinary authority' who instituted the enquiry :-

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 a lower disciplinary authority, on the ground that on merits 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.

[MHA OM No. 6/26/60-Ests.(A) dated the 8th June, 1962].

(2) Not appropriate to bring in past bad records in deciding the penalty, unless it is made the subject matter of specific charge of the charge-sheet itself :-

A question has arisen whether past bad record of service of an officer can be taken into account in deciding the penalty to be imposed on the officer in disciplinary proceedings, and whether the fact that such record has been taken into account should be mentioned in the order imposing the penalty. This has been examined in consultation with the Ministry of Law. It is considered that if previous bad record, punishment etc., of an officer is proposed to be taken into consideration in determining the penalty to be imposed, it should be made a specific charge in the charge-sheet 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 charge-sheet, would vitiate the proceedings, and so should be eschewed.

[G.I.M.H.A., OM No. 134/20/68-AVD, dated the 28th August, 1968].

(3) Passing of orders by the Disciplinary Authority on the report of Inquiry Officer- Quick disposal of cases :-

The following items sponsored by the Staff Side of the National Council of the Joint Consultative Machinery were discussed in the 9th Ordinary meeting of the National Council held on 25th and 26th September, 1970 :-

"Suitable provisions should be made in Rule 15 of the CCS (CCA) Rules, 1965 to make it obligatory on the part of the Disciplinary Authority to pass orders on the enquiry report within a period of 15 days, to avoid delay".

After some discussion, it was decided that the Official Side might examine the feasibility of prescribing a time-limit of two month within which the disciplinary authority should pass the orders on the report of the inquiry officer, and requiring that authority to submit a report to the next higher authority in cases where the time-limit cannot be adhered to, explaining the reasons therefor.

The suggestion of the Staff Side has accordingly been examined further. It is felt that, while 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 CCS (CCA) 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 Central Vigilance Commission or the UPSC, 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 CVC and the UPSC also, every effort should be made to ensure that cases are disposed of as quickly as possible.

[Cabinet Sectt. (Deptt. of Personnel) Memo No. 39/43/70-Ests.(A) dated the 8th January, 1971].

(3A) Delays in passing orders by the Disciplinary Authorities –

In the OM No. 39/43/70-Estt. (A) dated 08.01.1971, it has been envisaged that it should normally be possible for the disciplinary authority to take a final decision on the enquiry report within a period of three months. In cases where it is felt that it is not possible to adhere to this time limit, a report may be submitted to the next higher authority indicating the additional period required and reasons for the same. It should also be ensured that cases involving consultation with the CVC and UPSC are disposed of as quickly as possible.

2. Though no specific time limit has been prescribed in the above OM 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.

[Deptt. Of Personnel & Training OM No. 11012/21/98-Estt.(A) dated 11th November, 1998]

(4) Disciplinary cases – need for issuing speaking orders by competent authorities :-

As is well known and settled by courts, disciplinary proceedings against employees conducted under the provisions of CCS (CCA) Rules, 1965, or under other 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, 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 cap-rice, 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.

2. However, instances have come to the notice of this Department 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. Since such orders may not conform to legal requirements, 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.

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 those 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.

[Deptt. of Personnel & A.R. OM No. 134/1/81-AVD-I dated 13.07.1981]

(5) Supply of copy of inquiry report to the accused Government servant before final orders are passed by the disciplinary authority.

The issue as to whether in cases, where the disciplinary authority itself is not the inquiry officer, a copy of the inquiry report should be furnished to the accused Government servant to enable him to make his submissions, if any, before the disciplinary authority in regard to the findings of the report, before such authority passes its final orders, has been examined. The constitutional requirements laid down in Article 311 (2) of the Constitution of India, and the provisions of Rule 15 and 17 of the CCS (CCA) Rules, 1965 and rulings of the various benches of the Central Administrative Tribunal and of various courts on the matter have been kept in view.

2. The full bench of the Central Administrative Tribunal in the case of Prem Nath Sharma Vs. Union of India (represented by Ministry of Railways) have held that to fulfil the constitutional requirement of affording a reasonable opportunity, it is necessary that in all cases where the disciplinary authority is itself not the inquiry authority, a copy of the inquiry report shall be furnished to the accused Government servant to enable him to make his submissions in regard to the findings of the inquiry, before the disciplinary authority passes its order imposing the penalty. While giving its verdict, the full bench had taken into account the rulings of the various courts pronounced earlier on this issue. Although the special leave petition filed by the Ministry of Railways against the aforesaid judgment has been admitted for hearing and a stay order has been granted by the Supreme Court against its operation, the various benches of the Tribunal continue to follow the ratio laid down by the full bench. The special leave petitions filed by the concerned Ministries and Departments in some of the subsequent cases have not been admitted by the Supreme Court. In another similar case of E. Bashyam Vs. Department of Atomic Energy, in the special leave petition filed by the Department against the judgment of the CAT, the Supreme

Court has expressed its view in favour of the principle laid down by the Tribunal, but directed that the matter be referred to a larger bench of the court.

3. In the light of the aforesaid judgments, the matter has been examined in consultation with the Department of Legal Affairs and it has been decided that in al cases, where an inquiry has been held in accordance with the provisions of Rule 14 of the CCS (CCA) Rules, the disciplinary authority, if it is different from the inquiry authority shall before making a final order in the case, forward a copy of the inquiry report to the Government servant concerned with the following endorsement :-

"The report of the Inquiry Officer is enclosed. The Disciplinary Authority will take a suitable decision after considering the report. If you wish to make any representation or submission, you may do so in writing to the Disciplinary Authority within 15 days of receipt of this letter."

4. The aforesaid instructions will operate prospectively from the date of issue and accordingly will apply only in cases where the disciplinary authority is yet to pass orders. Past cases need not be reopened for consideration. These instructions will be reviewed after the final decision of the Supreme Court in the case of Prem Nath K. Sharma and E. Bashyam.

5. Ministry of Agriculture, etc. are requested to bring the above instructions to the notice of all Administrative Authorities under their control for compliance in all future cases including those in which the Central Administrative Tribunal has directed that a copy of the inquiry report be furnished to the accused Government servant before the Disciplinary Authority passes the order. In such cases the directive of the CAT should be complied with and no SLP should be filed. However, in cases where the SLPs on this issue are pending before the Supreme Court, the concerned Ministries/Departments may continue to pursue the cases for having an early hearing and an authoritative ruling on the issue.

[Deptt. of Personnel & Training's 11012/13/85-Estt. Dated 26th June, 1989].

(5A) Reasons for disagreement, if any should be communicated –

The Supreme Court has decided the matter finally in its judgment dated 01.10.1993 in the case of Managing Director (ECIL), Hyderabad Vs. B. Karunakar (JT 1993 (6) SC.I). It has been held by the Supreme Court that wherever the Service Rules contemplate an inquiry before a punishment is awarded and when the inquiry officer is not the disciplinary authority, the delinquent employee will have the right to receive the inquiry officer's report notwithstanding the nature of the punishment. Necessary amendment providing for supply of copy of the inquiry officer's report to the delinquent employee has been made in Rule 15 of the CCS (CCA) Rules, 1965 vide Notification No. 11012/4/94-Estt. (A) dated 03.05.1995. All disciplinary authorities are, therefore, required to comply with the above mentioned requirement without failure in all cases.

2. A question has been raised in this connection whether the disciplinary authority, when he decides to disagree with the inquiry report, should also communicate the reasons for such disagreement to the charged officer. The issue has been considered in consultation with the Ministry of Law and it has been decided that where the Inquiring Authority holds a charge as not proved and the disciplinary authority takes a contrary view, the reasons for such disagreement in brief must be communicated to the charged officer along with the Report of Inquiry so that the charged officer can make an effective representation. This procedure would require the Disciplinary Authority to first examine the report as per the laid down procedure and formulate its tentative views before forwarding the Report of Inquiry to the charged officer.

[Department of Personnel & Training OM No. 11012/22/94-Estt. (A) dated 27.11.1995]

(6) Jurisdiction of the CAT in the matter of quantum of penalty against Government servants –

Supreme Court judgment in case of Parma Nanda Vs. State of Haryana and others.

A number of cases have come to the notice of this Department where the CAT, though agreeing with the decision of the disciplinary authority to hold the charges against a delinquent Government servant as proved, have modified the quantum of penalty on their own discretion. 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 other [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 Suprme Court in that case further observed as under :

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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 Article 311 (2) of the Constitution. Where the person without inquiry is dismissed, removed or reduced in rank solely on the basis of conviction of 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 imposed 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)."

[Deptt. of Personnel & Training OM No. 11012/1/90-Ests.(A) dated 28-02-1990]

(6A) Jurisdiction of the CAT in the matter of disciplinary action against Government servants –

In the case of State Bank of India Vs. Samarendra Kishore Endow (1994(1) SLR 516) also the Supreme Court has held that a High Court or Tribunal has no power to substitute its own discretion for that of the authority.

2. In this Judgment the Supreme Court has 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 judgment 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 received fair treatment and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorized by law to decide for itself a conclusion which is correct in the eyes of the Court."

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It would perhaps be appropriate to mention at this 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.

[Deptt. Of Personnel & Training OM No. 11012/6/94-Estt. (A) dated 28.03.1994]

16. Procedure for imposing minor penalties

(1) Subject to the provisions of sub-rule (3) of rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of rule 11 shall be made except after-

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

(d) recording a finding on each imputation or misconduct or misbehaviour; and

(e) consulting the Commission where such consultation is necessary.

(1-A) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty.

(2) The record of the proceedings in such cases shall include-

(i) a copy of the intimation to the Government servant of the proposal to take action against him;

(ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;

(iii) his representation, if any;

(iv) the evidence produced during the inquiry;

(v) the advice of the Commission, if any;

(vi) the findings on each imputation of misconduct or misbehaviour; and

(vii) the orders on the case together with the reasons therefor.

Government of India's Decision :

(1) Enquiry mandatory in certain types of the penalty of witholding of increments :-

It has been decided in the meeting of National Council held on the 6th and 7th November, 1967, that in cases where increments are withheld for a period of more than three years or where increments are stopped with cumulative effect or where such stoppage is likely to affect adversely the pensionary entitlement, the procedure of holding an enquiry should

invariably be followed.

As the Ministry of Finance etc. are aware, clause (b) of sub-rule (1) of rule 16 of the CCS (CCA) Rules, 1965 makes provisions for holding an enquiry in the manner laid down in sub-rules (3) to (23) of rule 14 ibid in every case in which the disciplinary authority is of the opinion that such an inquiry is necessary. In view of the decision of the National Council, mentioned in the preceding paragraph, it has been decided that, notwithstanding the provision contained in rule 16 (1) (b) of the CCS (CCA) Rules, 1965, if in a case it is proposed, after considering that representation, if any, submitted by a Government servant, to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period or if the penalty of withholding of increments is likely to affect adversely the amount of pension payable to the Government servant, an enquiry shall invariably be held in the manner laid down in sub-rules (3) to (23) of rule 14 ibid.

[MHA OM No. 7/3/67-Ests.(A) dated the 19th January, 1968]

(2) Minor Penalty – holding of inquiry in specific circumstances :-

The Staff Side of the Committee of the National Council (JCM) set up to consider revision of CCS (CCA) Rules, 1965 had suggested that Rule 16 (1) should be amended so as to provide for holding an inquiry even for imposition of minor penalty, if the accused employee requested for such an inquiry.

2. The above suggestion has been given a detailed consideration. Rule 16 (1-A) of the CCS (CCA) Rules, 1965 provide 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 of representation of Government servant concerned on the imputations of misconduct or misbehavior 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 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 in 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.

[Deptt. of Personnel & Training OM No. 1101218/85-Ests.(A) dated 28th October, 1985]

17. Communication of Orders

Orders made by the disciplinary authority shall be communicated to the Government servant who shall also be supplied with a copy of its finding on each article of charge, or where the disciplinary authority is not the inquiring authority, a statement of the findings of the disciplinary authority together with brief reasons for its disagreement, if any, with the findings of the inquiring authority and also a copy of the advice, if any, given by the Commission, and where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance.

Government of India's Decision

(1) Entry of punishments in confidential rolls :-

It has been decided that if as a result of disciplinary proceedings any of the prescribed punishments (e.g. censure, reduction to a lower post etc.) is imposed on a Government servant, a record of the same should invariably be kept in his confidential roll.

[G.I., MHA OM No. 38/12/59-Ests.(A) dated the 23rd April, 1960].

18. Common Proceedings

(1) Where two or more Government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

NOTE-

If the authorities competent to impose the penalty of dismissal on such Government servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others.

(2) Subject to the provisions of sub-rule (4) of rule 12, any such order shall specify-

(i) the authority which may function as the disciplinary authority for the purpose of such common proceeding;

(ii) the penalties specified in rule 11 which such disciplinary authority shall be competent to impose;

(iii) whether the procedure laid down in rule 14 and rule 15 or rule 16 shall be followed in the proceeding.

Government of India's Instructions

(1) Procedure of enquiry when two Government servants accuse each other :-

In a recent case, two Government employees working in the same office made complaints against each other. The disciplinary authority initiated departmental proceedings against both the employees under Rule 18 of the CCS (CCA) Rules. The question whether it is legally permissible to enquire into the conduct of the accused and the accuser in one joint proceeding was examined in consultation with the Ministry of Law. Cross complaints arising out of the same or connected incident or transaction are not uncommon, and occur frequently in criminal cases. The Code of Criminal Procedure is silent with regard to the procedure to be adopted in such cases. The general principle as laid down by the Courts is that the accused in cross cases should be tried separately and that both the trials should be held simultaneously or in quick succession so as to avoid conflicting findings and different appraisal of the same evidence. On the analogy of the criminal law practice and procedure, a joint proceeding against the accused and accuser is an irregularity which should be avoided. This should be noted for future guidance.

[G.I. MHA Letter No. 6/98/63-AVD dated the 13th June, 1963].

19. Special procedure in certain cases

Notwithstanding anything contained in rule 14 to rule 18-

(i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules,

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be

imposed before any order is made in a case under clause (i):

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.

Government of India's Decisions :

(1) Scope of second proviso to Article 311 (2) of the Constitution :-

The judgment delivered by the Supreme Court on 11.07.85 in the case of Tulsi Ram Patel and others has been the cause of much controversy. The apprehension caused by the judgment is merely due to an inadequate appreciation of the point clarified in this judgment and in the subsequent judgement of the Supreme Court delivered on September 12, 1985 in the case of Satyavir Singh and others (Civil Appeal No. 242 of 1982 and Civil Appeal No. 576 of 1982). It is, therefore, imperative to clarify the issue for the benefit and guidance of all concerned.

2. In the first place it may be understood that the Supreme Court in its judgment has not established any new principle of law. It has only clarified the constitutional provisions, as embodied in Article 311 (2) of the Constitution. In other words, the judgment does not take away the constitutional protection granted to government employees by the said Article, under which no government employee can be dismissed, removed or reduced in rank without an inquiry in which he has been informed of the charges against him and given a reasonable opportunity to defend himself. It is only in three exceptional situations listed in clauses (a), (b) and (c) of the second proviso to Article 311 (2) that the requirement of holding such an inquiry may be dispensed with.

3. Even under these three exceptional circumstances, the judgment does not give unbridled power to the competent authority when it takes action under any of the three clauses in the second proviso to Article 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 Article 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.

4. When action is taken under clause (a) of the second proviso to Article 311 (2) of the Constitution or rule 19 (1) 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 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 should be. For that purpose, it will have to peruse the judgment 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. (The position has been undergone a change with incorporation of first proviso to Rule 19, which may be kept in view). 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.

5. 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 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.

6. Coming to clause (b) of the second proviso to Article 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 Article 311 (2) not reasonably practicable. What is required is that holding of inquiry is not practicable in the opinion of the 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 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 Article 311 (2), or rule 19 (ii) of the CCS (CCA) 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 Article 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 be 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 of 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.

7. It is true that the Article 311 (3) of the Constitution provides that the decision of the competent authority under clause (b) of the second proviso to Article 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 be 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.

8. Another important guidelines 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 Article 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 application should be postponed for a reasonable length of time for situation to return to normal.

9. As regards action under clause (c) of the second proviso to Article 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 Article 311 (2). This satisfaction is for 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.

10. The preceding paragraphs clarify the scope of clauses (a), (b) and (c) of the second proviso to Article 311 (2) of the Constitution, rule 19 of CSS (CC&A) Rules, 1965 and other service rules similar to it, in the light of the judgments 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 Article 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 Article 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.

[Department of Personnel & Training OM No. 11012/11/85-Estt. Dated the 11th November, 1985].

(2) Issue of charge-sheet where action is taken under Rule 19 :-

Paras 6 to 8 of this Department's OM of even No. dated 11th November, 1985 (Decision No. 1 above) contain instructions relating to factors that are relevant where action is taken under Clause (b) of the second proviso to Article 311 (2) of the Constitution.

2. 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".

3. 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.

4. In para 6 (i) of this Department's OM dated 11th November, 1985 (Decision No. 1 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.

[Department of Personnel & Training OM No. 11012/11/85-Estt.(A) dated 4th April, 1986].

20. Provisions regarding officers lent to State Governments, etc.

(1) Where the services of a Government servant are lent by one department to another department or to a State Government or an authority subordinate thereto or to a local or other authority (hereinafter in this rule referred to as " the borrowing authority"), the borrowing authority shall have the powers of the appointing authority for the purpose of placing such Government servant under suspension and of the disciplinary authority for the purpose of conducting a disciplinary proceeding against him:

Provided that the borrowing authority shall forthwith inform the authority which lent the services of the Government servant (hereinafter in this rule referred to as "the lending authority") of the circumstances leading to the order of suspension of such Government servant or the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding conducted against the Government servant-

(i) if the borrowing authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 11 should be imposed on the Government servant, it may, after consultation with the lending authority, make such orders on the case as it deems necessary:

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government servant shall be replaced at the disposal of the lending authority;

(ii) if the borrowing authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of rule 11 should be imposed on the Government servant, it shall replace his services at the disposal of the lending authority and transmit to it the proceedings of the inquiry and thereupon the lending authority may, if it is the disciplinary authority, pass such order thereon as it may deem necessary, or, if it is not the disciplinary authority, submit the case to the disciplinary authority which shall pass such orders on the case as it may deem necessary :

Provided that before passing any such order the disciplinary authority shall comply with the provisions of sub-rules (3) and (4) of rule 15.

EXPLANATION - The disciplinary authority may make an order under this clause on the record of the inquiry transmitted to it by the borrowing authority or after holding such further inquiry as it may deem necessary, as far as may be, in accordance with rule 14.

21. Provisions regarding officers borrowed from State Governments, etc.

(1) Where an order of suspension is made or a disciplinary proceeding is conducted against a Government servant whose services have been borrowed by one department from another department or from a State Government or an authority subordinate thereto or a local or other authority, the authority lending his services (hereinafter in this

rule referred to as "the lending authority") shall forthwith be informed of the circumstances leading to the order of the suspension of the Government servant or of the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding conducted against the Government servant, if the disciplinary authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 11 should be imposed on him, it may, subject to the provisions of sub-rule (3) of rule 15 and except in regard to a Government servant serving in the Intelligence Bureau up to the rank of Assistant Central Intelligence Officer, after consultation with the lending authority, pass such orders on the case as it may deem necessary-

(i) provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government servant shall be replaced at the disposal of the lending authority;

(ii) if the disciplinary authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall replace the services of such Government servant at the disposal of the lending authority and transmit to it the proceedings of the inquiry for such action, as it may deem necessary.

PART VII

APPEALS

22. Orders against which no appeal lies

Notwithstanding anything contained in this Part, no appeal shall lie against-

(i) any order made by the President;

(ii) any order of an interlocutory nature or of the nature of a step-in-aid of the final disposal of a disciplinary proceeding, other than an order of suspension;

(iii) any order passed by an inquiring authority in the course of an inquiry under Rule 14.

23. Orders against which appeal lies

Subject to the provisions of rule 22, a Government servant may prefer an appeal against all or any of the following orders, namely:-

(i) an order of suspension made or deemed to have been made under rule 10;

(ii) an order imposing any of the penalties specified in rule 11, whether made by the disciplinary authority or by any appellate or revising authority;

(iii) an order enhancing any penalty, imposed under rule 11;

(iv) an order which-

(a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or by agreement; or

(b) interprets to his disadvantage the provisions of any such rule or agreement;

(v) an order-

(a) stopping him at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;

(b) reverting him while officiating in a higher service, grade or post, to a lower service, grade or post, otherwise than as a penalty;

(c) reducing or withholding the pension or denying the maximum pension admissible to him under the rules;

(d) determining the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof;

(e) determining his pay and allowances-

(i) for the period of suspension, or

(ii) for the period from the date of his dismissal, removal or compulsory retirement from service, or from the date of his reduction to a lower service, grade, post, time-scale or stage in a time-scale of pay, to the date of his reinstatement or restoration to his service, grade or post; or

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

EXPLANATION- In this rule-

(i) the expression 'Government servant' includes a person who has ceased to be in Government service;

(ii) the expression 'pension' includes additional pension, gratuity and any other retirement benefits.

24. Appellate Authority

(1) A Government servant, including a person who has ceased to be in Government service, may prefer an appeal against all or any of the orders specified in Rule 23 to the authority specified in this behalf either in the Schedule or by a general or special order of the President or, where no such authority is specified-

(i) where such Government servant is or was a member of a Central Service, Group 'A' or Group 'B' or holder of a Central Civil Post, Group 'A' or Group 'B' -

(a) to the appointing authority, where the order appealed against is made by an authority subordinate to it; or

(b) to the President where such order is made by any other authority;

which the authority making the order appealed against is immediately subordinat(ii) where such Government servant is or was a member of a Central Civil Service, Group 'C' or Group 'D', or holder of a Central Civil Post, Group 'C' or Group 'D', to the authority toe.

(2) Notwithstanding anything contained in sub-rule (1)-

(i) an appeal against an order in a common proceeding held under Rule 18 shall lie to the authority to which the authority functioning as the disciplinary authority for the purpose of that proceeding is immediately subordinate :

Provided that where such authority is subordinate to the President in respect of a Government servant for whom President is the appellate authority in terms of sub-clause (b) of clause (i) of sub-rule (1), the appeal shall lie to the President.

(ii) where the person who made the order appealed against becomes, by virtue of his subsequent appointment or otherwise, the appellate authority in respect of such order, an appeal against such order shall lie to the authority to which such person is immediately subordinate.

(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.

Government of India's Instructions

(1) Appeal in the case of a disciplinary order against an office-bearer of an association or union :-

All appeals to the President under sub-rule (3) of Rule 24 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 appeals addressed to the President, require such submission or not.

In respect of persons serving in the Indian Audit and Accounts Department, the appeals referred to in the preceding para, shall be disposed of by the Comptroller and Auditor General of India.

(G.I. MHA OM No. 7/14/64-Ests.(A) dated the 18th April, 1967].

25. Period of Limitation of appeals

No appeal preferred under this part shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copy of the order appealed against is delivered to the appellant :

Provided that the appellate authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

26. Form and contents of appeal

(1) Every person preferring an appeal shall do so separately and in his own name.

(2) The appeal shall be presented to the authority to whom the appeal lies, a copy being forwarded by the appellant to the authority which made the order appealed against. It shall contain all material statements and arguments on which the appellant relies, shall not contain any disrespectful or improper language, and shall be complete in itself.

(3) The authority which made the order appealed against shall, on receipt of a copy of the appeal, forward the same with its comments thereon together with the relevant records to the appellate authority without any avoidable delay, and without waiting for any direction from the appellate authority.

27. Consideration of appeal

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of rule 10 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider-

(a) whether the procedure laid down in these rules have been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case :

provided that-

(i) The Commission shall be consulted in all cases where such consultation is necessary;

(ii) If such enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 11 and in inquiry under rule 14 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of rule 14 and thereafter, on a consideration of the proceedings of such inquiry and make such orders as it may deem fit:

(i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 11 and an enquiry under rule 14 has been held in the case, the appellate authority shall make such orders as it may deem fit after the appellant has been given a reasonable opportunity of making a representation against the proposed penalty; and

(ii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of rule 16, of making a representation against such enhanced penalty.

(3) In an appeal against any other order specified in rule 23, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.

Government of India's Instructions :

(1) Time-limit for the disposal of appeals :-

The following suggestions have been examined in order to achieve quicker disposal of appeals :-

(a) the need for and the feasibility of appointing additional appellate authorities wherever the present workload of appellate authorities is unduly heavy; and

(b) the prescribing of a procedure by which the position regarding pending appeals could be reviewed by higher authorities at periodical intervals so as to take suitable and timely remedial action.

2. The two suggestions mentioned in para 1 have been examined. Although 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 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 redistributed 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) Rules.

3. 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 indicating particularly

the reasons on account of which the appeals could not be disposed of within a month and the further 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 CCS (CCA) Rules, 1965, the aforesaid statement should be submitted to the Secretary of the Ministry/Department concerned for similar scrutiny.

(Cabinet Sectt. (Department of Personnel), OM No. 39/42/70-Ests.(A) dated the 15th May, 1971).

(2) Personal hearing at the discretion of appellate authority in major penalty cases :-

The Committee of the National Council (JCM) set up to review the CCS (CCA) Rules, 1965 has recommended that provision may be made for personal hearing by the Appellate authority of the employee concerned if the appeal is against a major penalty.

2. The above recommendation has been considered in all its aspects. 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, as its discretion, the personal hearing.

[G.I., Deptt. of Personnel & Trg. OM No. 11012/20/85-Estt.(A) dated 28th October, 1985].

The Staff side in the National Council (JCM) have requested that the Government servants against whom a major penalty has been imposed should be allowed the services of defence assistant to present their case before the competent authority at appeal/revision stage.

(2A) The proposal was discussed in the meeting of the National Council (JCM) on 31.01.1991 and it has been decided that in all those cases where a personal hearing is allowed by the appellate authority in terms of OM dated 28.10.85, referred to above, the Government servant may be allowed to take the assistance of a defence assistant also, if a request is made to that effect.

[G.I.Deptt. of Personnel & Trg. OM No. 11012/2/91-Estt.(A) dated 23.04.91]

28. Implementation of orders in appeal

The authority which made the order appealed against shall give effect to the orders passed by the appellate authority.

PART VIII

REVISION AND REVIEW

29. Revision

(1) Notwithstanding anything contained in these rules-

(i) the President; or

(ii) the Comptroller and Auditor-General, in the case of a Government servant serving in the Indian Audit and Accounts Department; or

(iii) the Member (Personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Services Board and Adviser (Human Resources Development), Department of Telecommunications in the case of a Government servant serving in or under the Telecommunications Board; or

(iv) the Head of a Department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board), under the control of such Head of a Department; or

(v) the appellate authority, within six months of the date of the order proposed to be revised or

(vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order;

may at any time, either on his or its own motion or otherwise call for the records of any inquiry and revise any order made under these rules or under the rules repealed by rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may-

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order to or any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of rule 11 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under rule 14 has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in rule 14 subject to the provisions of rule 19, and except after consultation with the Commission where such consultation is necessary :

Provided further that no power of revision shall be exercised by the Comptroller and Auditor-General, Member (Personnel), Postal Services Board, Adviser (Human Resources Department), Department of Telecommunications or the Head of Department, as the case may be, unless-

(i) the authority which made the order in appeal, or

(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

(2) No proceeding for revision shall be commenced until after-

(i) the expiry of the period of limitation for an appeal, or

(ii) the disposal of the appeal, where any such appeal has been preferred.

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules.

Government of India's Instructions

(1) Procedure to be followed while proposing enhancement of the penalty already imposed on a Government servant :-

Instances have been brought to the notice of this Ministry in which when orders of punishment passed by the subordinate authorities were reviewed under Rule 29 (1) of the CCS (CCA) Rules, 1965, and a provisional conclusion reached that the penalty already imposed was not adequate, the authorities concerned set aside/cancelled the order of punishment already passed by the subordinate authorities and simultaneously served show-cause notices for the imposition of higher penalties. Thereafter, the replies of the Government servants to show-cause notices were considered and the Union Public Service Commission also consulted, wherever necessary, before the imposition of enhanced penalties.

It is clarified that in case of the kind mentioned in the preceding paragraph, it is not appropriate to set aside/cancel the penalty already imposed on the Government servants, more so when the revising authority is the President, as strictly speaking cancellation of the penalty, if done in the name of the President amounts to modification by the President of the earlier order of the subordinate authority, for which prior consultation with the Union Public Service Commission is necessary under Regulation 5 (1) (c) of the UPSC (Exemption from Consultation) Regulations, 1958. The correct procedure in such cases will, therefore, be to take action in accordance with the first proviso to Rule 29 (1) of the CCS (CCA) Rules, 1965, without cancelling/setting aside the order of the subordinate authority. It is only at the final stage when orders are issued modifying the original penalty, that it would be necessary to set aside the original order of penalty.

(G.I. MHA OM No. 39/2/68-Ests.(A) dated the 14th May, 1968).

29-A. Review

The President may, at any time, either on his own motion or otherwise review any order passed under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought, to his notice:

Provided that no order imposing or enhancing any penalty shall be made by the President unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties specified in rule 11 or to enhance the minor penalty imposed by the order sought to be reviewed to any of the major penalties and if an enquiry under rule 14 has not already been held in the case, no such penalty shall be imposed except after inquiring in the manner laid down in rule 14, subject to the provisions of rule 19, and except after consultation with the Commission where such consultation is necessary.

Government of India's Instructions

(1) President's power of review under Rule 29 –

Attention is invited to this Department Notification of even number dated the 6th August, 1981 amending Rule 29 of the CCS (CCA) Rules, 1965, and introducing Rule 29-A therein. The amendment has been necessitated by the judgment of the Delhi High Court in the case of Shri R.K.Gupta Vs. Union of India and another (Civil Writ Petition Nos. 196 of 1978 and 322 of 1979) in which the High Court has held that under Rule 29 of the CCS (CCA) Rules, 1965 –

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

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

The matter has been examined in consultation with the Ministry of Law who has observed that the judgment 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-A, has been introduced specifying the power 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. If may also be noted that 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 Rule 29-A, the heading of Part VIII of the CCS (CCA) Rules, 1965 has also been appropriately changed as "Revision and Review".

[MHA, (D/o P&AR) OM No. 11012/1/80-Ests.(A) dated the 3rd September, 1981].

PART IX

MISCELLANEOUS

30. Service of orders, notices, etc.

Every order, notice and other process made or issued under these rules shall be served in person on the Government servant concerned or communicated to him by registered post.

31. Power to relax time-limit and to condone delay

Save as otherwise expressly provided in these rules, the authority competent under these rules to make any order may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in these rules for anything required to be done under these rules or condone any delay.

32. Supply of copy of Commission's advice

Whenever the Commission is consulted as provided in these rules, a copy of the advice by the Commission and where such advice has not been accepted, also a brief statement of the reasons for such non-acceptance, shall be furnished to the Government servant concerned along with a copy of the order passed in the case, by the authority making the order.

33. Transitory Provisions

On and from the commencement of these rules, and until the publication of the Schedules under these rules, the Schedules to the Central Civil Services (Classification, Control and Appeal) Rules, 1957, and the Civilians in Defence Services (Classification, Control and Appeal) Rules, 1952, as amended from time to time, shall be deemed to be the Schedules relating to the respective categories of Government servants to whom they are, immediately before the commencement of these rules, applicable and such Schedules shall be deemed to be the Schedules referred to in the corresponding rules of these rules.

34. Repeal and Saving

(1) Subject to the provisions of rule 33, the Central Civil Services (Classification, Control and Appeal) Rules, 1957, and the Civilians in Defence Services (Classification, Control and Appeal) Rules, 1952, and any notifications or orders issued thereunder in so far as they are inconsistent with these rules, are hereby repealed:

Provided that-

(a) such repeal shall not affect the previous operation of the said rules, or any notification or order made, or anything done, or any action taken, thereunder;

(b) any proceedings under the said rules, pending at the commencement of these rules shall be continued and disposed of, as far as may be, in accordance with the provisions of these rules, as if such proceedings were proceedings under these rules.

(2) Nothing in these rules shall be construed as depriving any person to whom these rules apply, of any right of appeal which had accrued to him under the rules, notification or orders in force before the commencement of these rules.

(3) An appeal pending at the commencement of these rules against an order made before such commencement shall be considered and orders thereon shall be made, in accordance with these rules as if such orders were made and the appeals were preferred under these rules.

(4) As from the commencement of these rules any appeal or application for review against any orders made before such commencement shall be preferred or made under these rules, as if such orders were made under these rules :

Provided that nothing in these rules shall be construed as reducing any period of limitation for any appeal or review provided by any rule in force before the commencement of these rules.

35. Removal of doubts

If any doubt arises as to the interpretation of any of the provisions of these rules, the matter shall be referred to the President or such other authority as may be specified by the President by general or special order, and the President or such other authority shall decide the same.

Government of India's Instructions

(1) Copy of advice by UPSC to be given to Government servant –

Rule 32 lays down inter alia that a copy of the advice given by the Union Public Service Commission should be furnished to the Government servant concerned. It has been decided, in consultation with the Commission, that henceforth the Commission should furnish two spare copies along with the original advice letter in each case. In respect of disciplinary cases received from State/Central Government in regard to All India Service Officers also, the Commission will adopt the same practice, the only difference being that, in case of references received from State Governments, one spare copy of the advice letter will be sent to them and the other to Home Ministry for information.

[MHA OM No. F.23/19/60-Ests.(B) dated the 29th December, 1964].

(2) Procedure regarding closing of disciplinary cases in the event of death of the charged official

This Department has been receiving references seeking clarification whether disciplinary cases initiated against the Government servant under CCS (CCA) Rules, 1965, would be closed in the event of death or the charged officer during pendency of the proceedings. After careful consideration of all the aspects, it has been decided that 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.

[Deptt. Of Personnel & Training OM No. 11012/7/99-Estt. (A) dated 20th October, 1999]

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

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 Government servants deputed for election duties under section 28A of 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 21.09.2000 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 recommendation to the competent authority, for taking disciplinary action, for any act of insubordination or dereliction of duty, while on election duty. Such recommendation 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 the Election Commission's recommendation.

(d) the Government of India will advise 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."

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 Acts 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.

[Deptt. Of Personnel & Training OM No. 11012/7/98-Estt. (A), dated 7th November, 2000]

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

Reference is invited to the Department of Personnel and Training's O.M. No. 11012/7/98-Estt. (A) dated 07.11.2000 (copy enclosed) on the above mentioned subject and to say that the Election Commission have observed that the Governments in many cases do not initiate proceedings promptly against Government servants on the Commission's recommendations.

2. As per the aforementioned O.M. dated 07.11.2000, 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 Order dated 21.09.2000 in Writ Petition (C) No. 606 of 1993 (Election Commission of India vs. Union of India and Ors.). The terms of settlement were as follows :-

"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 recommendation to the competent authority, for taking disciplinary action, for any act of insubordination or dereliction of duty, while on election duty. Such recommendation 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 the Election Commission's recommendations;

(d) the Government of India will advise 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."

It has been brought to the notice of this Department by the Election Commission of India that in many cases the Governments concerned do not initiate promptly disciplinary action against the delinquent officials as recommended by the Commission as envisaged in the aforesaid agreement.

3. The instructions issued in terms of the DOPT's O.M. dated 07.11.2000 are, therefore, reiterated and it is emphasized that 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.

4. All Ministries/Departments are requested to bring the aforementioned Terms of Settlement and the contents of para 3 above to the notice of all concerned for information and compliance.

[DOPT O.M. No. 11012(4)/2008-Estt. (A)Dated the 20th March, 2008].

(5) Disciplinary jurisdiction of Election Commission of India over Government servants deput election duties.

Reference is invited to the Department of Personnel and Training's O.M. of even number dated 20.03.2008 on above mentioned subject and to say that attention was drawn therein to the principles and decisions agreed between the Union Government and the Election Commission of India in respect of disciplinary action against t Government servants deputed for election duties. The relevant **Terms of Settlement** have been cited in par DOPT's O.M. No. 11012/7/98-Estt. (A) dated 07.11.2000. As per part(c) of these Terms of Settlement,

(a) the disciplinary functions of the Election Commission over the officers, staff and pol deputed to perform election duties shall extend, *inter alia*, to making recommendation to the competent authority for taking disciplinary action for any act of insubordination or dereliction duty while on election duty.; and

(b) such recommendation shall be promptly acted upon by the disciplinary authority ar action taken will be communicated to the Election Commission within a period of six months fr the date of the Commission's recommendation.

The instructions issued in this regard were reiterated in the DOPT's O.M. dated 20-3-2008 wherein it was emphasized that the aforementioned Terms of Settlement have to be complied with while adhering to the prov of the relevant disciplinary rules.

2. The matter concerning departmental proceedings against officials appointed on election duty

has recently been further considered by the Government. It has now been decided that 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.

[DOPT O.M. No. 11012(4)/2008-Estt. (A) Dated the 28th July, 2008]

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

Reference is invited to the Department of Personnel and Training's letter of even number dated 20.03.2008 on above mentioned subject and to say that attention was drawn therein to the principles and decisions agreed between the Union Government and the Election Commission of India in respect of disciplinary action against t Government servants deputed for election duties. The relevant **Terms of Settlement** have been cited in par DOPT's letter No. 11012/7/98-Estt. (A) dated 07.11.2000. As per part(c) of these Terms of Settlement,

(a) the disciplinary functions of the Election Commission over the officers, staff and police deputed to perform election duties shall extend, *inter alia*, to making recommendation t competent authority for taking disciplinary action for any act of insubordination or derel of duty while on election duty.; and

(b) such recommendation shall be promptly acted upon by the disciplinary authority and t action taken will be communicated to the Election Commission within a period of six mo from the date of the Commission's recommendation.

The instructions issued in this regard were reiterated in the Department of Personnel and Training's letter dated 20-3-2008 wherein it was emphasized that the aforementioned Terms of Settlement have to be complied with while adhering to the provisions of the relevant disciplinary rules.

2. The matter concerning departmental proceedings against officials appointed on election duty has recently been further considered by the Government. It has now been decided that 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.

3. It is requested that the decision referred to in para 2 may be followed by all the State Governments/Union Territory Administration in the cases of officials deputed by them for election duties.

[DOPT O.M. No. 11012(4)/2008-Estt. (A) Dated the 28th July, 2008]