

## 11. THE ALL INDIA SERVICES (DISCIPLINE AND APPEAL) RULES, 1969

In exercise of the powers conferred by sub-section (1) of Section 3 of the All India Services Act, 1951 (61 of 1951), the Central Government, after consultation with the Government of the State concerned, hereby makes the following rules, namely :—

1. **Short title and commencement.**—(1) These rules may be called the All India Services (Discipline and Appeal) Rules, 1969.

(2) They shall come into force on the date of their publication in the official Gazette.

2. **Definitions.**—In these rules, unless the context otherwise requires—

(a) “*Commission*” means the Union Public Service Commission;]

(b) “*Disciplinary authority*” means the authority competent under these rules to impose on a member of the service any of the penalties specified in Rule 6 ;

<sup>1</sup>(c) “*Government*” means—

(i) in the case of a member of the Service serving in connection with the affairs of a State, or who is deputed for service in any company, association or body of individual whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a State, or in a local authority set up by an Act of the Legislature of a State, the Government of that State;

(ii) in any other case, the Central Government ;

<sup>2</sup>(d) member of the service means a member of an All India Service as defined in Section 2 of the All India Services Act, 1951 (61 of 1951).

<sup>3</sup>(dd) “*Probationer*” means a person appointed to the service on probation” ;

(e) “*State Government concerned*” in relation to a joint cadre, means the Governments of all the States for which the joint cadre is constituted and includes the Government of a State nominated by the Governments of all such States to represent them in relation to a particular matter.

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1. Subs. by DP & AR Notification No. 6/9/72-AIS (III), dated 5.7.1975 (GSR No. 872, dated 19.7.1975).
  2. Subs. by DP & AR Notification No. 31/7/72-AIS (III), dated 22.5.1973.
  3. Ins. by DP & AR Notification No. 11018/4/76-AIS, dated 25.2.1977, (GSR No. 358, Gazette, dated 19.3.1977).

## PART II

## Suspension

3. **Suspension.**—<sup>1</sup>(1) If, having regard to the circumstances in any case and where articles of charge have been drawn up, the nature of the charges, the Government of a State or the Central Government, as the case may be, is satisfied that it is necessary or desirable to place under suspension a member of the service, against whom disciplinary proceedings are contemplated or are pending, that Government may,—

- (a) if the member of the service is serving under that Government, pass an order placing him under suspension, or
- (b) if the member of the service is serving under another Government, request that Government to place him under suspension,

pending the conclusion of the disciplinary proceedings and the passing of the final order in the case :

Provided that, in cases, where there is a difference of opinion,—

- (i) between two State Governments, the matter shall be referred to Central Government for its decision ;
- (ii) between a State Government and the Central Government, the opinion of the Central Government shall prevail :

<sup>2</sup>[Provided further that, where a member of the service against whom disciplinary proceedings are contemplated in suspended, such suspension shall not be valid, unless before the expiry of a period of ninety days from the date from which the member was suspended, disciplinary proceedings are initiated against him :

Provided also that the Control Government may, at any time before the expiry of the said period of <sup>3</sup>[thirty days] and after considering the special circumstances for not initiating disciplinary proceeding, to be recorded in writing allow continuance of the suspension order beyond the period of <sup>4</sup>[thirty days] without the disciplinary proceedings being initiated.] , ,

- <sup>5</sup>[(c) IAS officers working under Central Government shall only be suspended on the recommendations of the Central Review Committee as amended with the approval of Minister-in-charge, Department of Personnel & Training.]

<sup>6</sup>(1-A) If the Government of a State or the Central Government, as the case may be, is of the opinion that a member of the Service has engaged himself

1. Deleted/Ins./Subs. by DP & AR Notification No. 6/9/72-AIS (III), dated 5.7.1975, (GSR No. 872, dated 19.7.1975).
2. Amended by G.S.R. 130, dated 13.7.1998.
3. Subs. by G.S.R. 1001(E), dated 21st December, 2015 (w.e.f. 23-12-2015), for the words "forty-five days".
4. Subs. by G.S.R. 1001(E), dated 21st December, 2015 (w.e.f. 23-12-2015), for the words "forty-five days".
5. Ins. by G.S.R. 1001(E), dated 21st December, 2015 (w.e.f. 23-12-2015).
6. Deleted/Ins./Subs. by DP & AR Notification No. 6/9/72-AIS (III), dated 5.7.1975 (G.S.R. No. 872, dated 19.7.1975).



in activities prejudicial to the interests of the security of the State, that Government may—

- (a) if the member of the Service is serving under that Government, pass an order placing him under suspension, or
- (b) if the member of the Service is serving under another Government request, that Government of place him under suspension,

till the passing of the final order in the case :

Provided that, in cases, where there is a difference of opinion—

- (i) between two State Governments, the matter shall be referred to the Central Government for its decision ;
- (ii) between a State Government and the Central Government, the opinion of the Central Government shall prevail.

(2) A member of the Service, who is detained in official custody whether on a criminal charge or otherwise for a period longer than forty-eight hours, shall be deemed to have been suspended by the Government concerned under this rule.

(3) A member of the Service in respect of, or against, whom an investigation, inquiry or trial relating to a criminal charge is pending may, at the discretion of the Government <sup>1</sup>[ ] be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as a [member of the service] or is likely to embarrass him in the discharge of his duties or involves moral turpitude.

(4) A member of the Service shall be deemed to have been placed under suspension <sup>2</sup>by the Government concerned with effect from the date of conviction of, in the event of conviction for a criminal offence, he is not forthwith dismissed or removed or compulsorily retired consequent on such conviction provided that the conviction carries a sentence of imprisonment exceeding forty-eight hours.

<sup>3</sup>*Explanation.*—The period of forty-eight hours referred to in sub-rule (4) shall be commuted from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(5) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of the Service 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

1. Subs. by DP & AR Notification No. 6/9/72-AIS (III), dated 5.7.1975 (GSR No. 872, dated 19.7.1975).
2. *Inserted/Substituted* by DP & AR Notification No. 6/9/73-AIS (III), dated 26.7.1975 (GSR No. 985, dated 9.8.1975).
3. Ins. by DP & AR Notification No. 11018/6/78-AIS (III), dated 16.11.1978 (GSR No. 1415, Gazette, dated 2.12.1978).



order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(6) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of the Service 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 further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the member of the Service shall be deemed to have been placed under suspension by the Central Government from the date of original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders :

<sup>1</sup>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.

<sup>2</sup>(6-A) Where an order of suspension is made, or deemed to have been made, by the Government of a State under this rule, detailed report of the case shall be forwarded to the Central Government <sup>3</sup>[\*\*\*] within a period of fifteen days of the date on which the member of the Service is suspended or is deemed to have been suspended, as the case may be.

(7) (a) 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 member of the Service 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 member of the Service shall continue to be under suspension <sup>4</sup>[subject to sub-rule (8)];

(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.

### NOTES

**Order of suspension—Legality of.**—The intention of the framer of the rule is to keep the employee under suspension till the termination of criminal proceeding. Admittedly two criminal cases are pending against the petitioner. The Court was unable to accept the submissions that the subsequent notification is not a fresh order of suspension rather it is an order of conversion of the earlier order. As a matter of fact

1. Ins. by DP and AR Notification No. 11018/11/81-AIS (III), dated 3.8.1983 (GSR No. 612, dated 20.8.1983).
2. Ins. by DP and AR Notification No. 6/9/72-AIS (III), dated 5.7.1975 (GSR No. 872, dated 19.7.1975).
3. Word "ordinarily" omitted by G.S.R. 1001(E), dated 21st December, 2015 (w.e.f. 23-12-2015).
4. Subs. by G.S.R. 130, dated 13.7.1998.



in the order of suspension it was clearly mentioned that the petitioner was put under suspension earlier when he was taken into custody and after his release from the judicial custody he is liable to be put under suspension because of the pendency of the criminal proceedings. Therefore, the Central Administrative Tribunal has rightly held that the impugned order of suspension does not suffer from any illegality or irregularity. [*Vijay Kumar Sinha v. Union of India*, 2009 (120) FLR 832 (Jhar)].

**Revocation of suspension.**—If an order of suspension was issued just because an enquiry against an officer was either pending or under contemplation without application of mind as to whether it was necessary or desirable to place the officer under suspension, it cannot be justified. [*M.S. Murthy I.A.S. v. Union of India*, 2000 (2) SLJ 143 (CAT) (Jab)].

### Government of India's Decision

**D.P. & A.R. Letter No. 11018/8/78-AIS (III), dated 19.5.1978.**—The scope of the action that can be taken against a member of the Service whose dismissal, removal or compulsory retirement from Service has been set aside or declared or rendered void in consequence of or by a decision of a Court of law under sub-rule (6) of Rule 3 and the circumstances which a disciplinary authority should take into account while taking recourse to this rule have been examined and it is clarified for the information of State Governments that the further inquiry contemplated in sub-rule (6) of Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969 should not be ordered except in a case when the penalty of dismissal, removal or compulsory retirement has been set aside by a Court of Law on technical grounds without going into the merits of the case or when fresh material has come to light which was not before the Court. A further inquiry into the charges which have not been examined by the Court, can however, be ordered by the inquiring authorities under sub-rule (6) of Rule 3 depending on the facts and circumstances of each case.

### EXECUTIVE INSTRUCTIONS

(1) **D.P. & A.R. Letter No. 11018/1/76-AIS (III), dated 11.2.1976.**—As soon as a member of the Service is placed under suspension or is deemed to have been placed under suspension, the fact may be communicated to this department telegraphically and a detailed report of the case may be furnished within 15 days of suspension, as provided for in the rules.

(2) **D.P. & A.R. Letter No. 11018/1/76-AIS (III), dated 30.4.1979.**—Whenever, a member of an All India Service who is placed under suspension submits an appeal or memorial against the order of the State Government placing him under suspension, the same should be forwarded to the Central Government by the State Government together with their comments within one week of its receipt. If the original appeal or memorial along with the comments of the State Governments is not received by the Central Government within that period the Central Government would take a decision on the advance copy of the appeal or memorial received by them.

(3) The original appeal or memorial submitted by a member of the service referred to above and the report about the orders issued by the State Government placing a member of the service under suspension, as envisaged in this department's letter of even number dated the 11th February, 1976, may be forwarded to this department in the case of members of the Indian Administrative Service to the Ministry of Home Affairs in the case of the Indian Police Service and to the Ministry of Agriculture and Irrigation (Department of Agriculture) in the case of the Indian Forest Service.



<sup>1</sup>[(8)(a) An order of suspension made under this rule which has not been extended shall be valid for a period not exceeding <sup>2</sup>[sixty days] and an order of suspension which has been extended shall remain valid for a further period not exceeding <sup>3</sup>[one hundred-twenty days] at a time, unless revoked earlier.

(b) An order of suspension made or deemed to have been made or continued, shall be reviewed by the competent authority on the recommendations of the concerned Review Committee.

(c) The composition and functions of the Review Committees and the procedure to be followed by them shall be as specified in the Schedule annexed to these rules.

(d) The period of suspension under sub-rule (1) may, on the recommendations of the concerned Review Committee, be extended for a further period not exceeding one hundred and eighty days at a time :

Provided that where no order has been passed under this Clause, the order of suspension shall stand revoked with effect from the date of expiry of the order being reviewed.

<sup>4</sup>[(9) (a) Every order of suspension and every order of revocation shall be made in the stipulated standard form appended to these rules;

(b) A copy of the order shall be endorsed to the Appointing Authority, if the order is made by some other authority; and to the Lending Authority in the case of borrowed officer;

(c) The reasons for issue of every such order shall be communicated to the Appointing Authority and the Lending Authority, through confidential letters alongwith the order itself; and

(d) A copy of the suspension order alongwith the reasons or grounds of suspension shall be communicated to the Cadre Controlling authority in the Central Government not later than forty-eight hours.]

<sup>5</sup>[(10) As soon as a member of the Service is placed under suspension or is deemed to have been placed under suspension, the information in this regard shall be communicated to Government of India expeditiously and within the period of forty-eight hours.]

### NOTES

Order of suspension was passed during the pendency of the disciplinary proceeding. Mere fact that impugned order does not, contain a recital that the Governor is satisfied that it is either necessary or desirable to place him under suspension does not, render the said order invalid. The law is well settled that in cases where the exercise of statutory power in subject to the fulfilment of the said condition and the burden is no

1. Added by G.S.R. 130, dated 13.7.1998.
2. Subs. by G.S.R. 1001(E), dated 21st December, 2015 (w.e.f. 23-12-2015), for the words "ninety days".
3. Subs. by G.S.R. 1001(E), dated 21st December, 2015 (w.e.f. 23-12-2015), for the words "one hundred-eighty days".
4. Subs. by G.S.R. 1001(E), dated 21st December, 2015 (w.e.f. 23-12-2015).
5. Ins. by G.S.R. 1001(E), dated 21st December, 2015 (w.e.f. 23-12-2015).



the person who challenges the validity of the order to show that the said condition was not fulfilled. [*State of Haryana v. Hari Ram Yadava*, 1994 (68) FLR 493 (SC) (FB)].

Departmental enquiry is no bias by Enquiry Officer. Reasonable opportunity should be given to appellant. Non-compliance of any statutory rule or principles of natural justice. [*Jiwanlal Kochar v. Union of India*, 1983 UJ (SC) 852].

A member of service against whom disciplinary proceedings are contemplated can be suspended even the charges have not actually been drawn up. [*Vinod Kumar v. Union of India*, 1999 SLJ (3) 101 (CAT)].

**Continuance of suspension for prolonged period not justified.**—The first respondent has been under suspension for more than six years. While releasing the first Respondent on bail, liberty was given to the investigating agency to approach the Court in case he indulged in tampering with the evidence. Admittedly, no complaint is made by the CBI in that regard. Even now the Appellant has no case that there is any specific instance of any attempt by the first respondent to tamper with evidence.

In the minutes of the review committee meeting held on 27.06.2016, it was mentioned that the first Respondent is capable of exerting pressure and influencing witnesses and there is every likelihood of the first Respondent misusing office if he is reinstated as Inspector General of Police. Only on the basis of the minutes of the Review Committee meeting, the Principal Secretary, Home (SC) Department ordered extension of the period of suspension for a further period of 180 days beyond 09.07.2016 *vide* order dated 06.07.2016.

The Supreme Court in *Ajay Kumar Choudhary v. Union of India*, (2015) 7 SCC 291 : AIR 2015 SC 2389, has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short duration. On the basis of the material on record, no useful purpose would be served by continuing the first Respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. The Appellant State has the liberty to appoint the first Respondent in a non-sensitive post. [*State of Tamil Nadu Rep. By Secretary To Govt. (Home) v. Promod Kumar IPS*, AIR 2018 SC 4060 : 2018 (4) JCR SC 188 : 2018 (10) Scale 157 (SC)].

**4. Subsistence allowance during suspension.**—<sup>1</sup>(1) A member of the Service under suspension or deemed to have been placed under suspension by the Government concerned shall be entitled to receive from that Government :—

- (a) a subsistence allowance at an amount equal to the leave salary which a member of the Service would have drawn if he had been on leave on half-average pay or on half pay and in addition, dearness allowance, if admissible on the basis of such leave salary :

Provided that where the period of suspension exceeds <sup>2</sup>three months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first <sup>3</sup>three months as follows :

1. Subs. by DP & AR Notification No. 1101111/78-AIS (III), dated 16.6.1979.
2. Subs. by DP & AR Notification No. 28013/2/78-AIS (III), dated 12.1.1982 (GSR No. 92, dated 30.1.1982).
3. Subs. by D.P. & A.R. Notification No. 28013/2/78-AIS (III), dated 12.1.1982 (G.S.R. No. 92 dated 30.1.1982)



- (i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first <sup>1</sup>three months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons, to be recorded in writing, not directly attributable to the member of the Service.
  - (ii) the amount of subsistence allowance may be reduced by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first <sup>2</sup>three months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons, to be recorded in writing directly attributable to a member of the Service ;
  - (iii) the rate of dearness allowance will be based on the increased or, as the case may be, the reduced amount of subsistence allowance admissible under sub-clause (i) or sub-clause (ii) above.
- (b) any other compensatory allowance admissible from time to time on the basis of pay of which a member of the Service was in receipt on the date of suspension, subject to the fulfilment of other conditions laid down for the drawal of such allowance."

(2) No member of the Service shall be entitled to receive payment under sub-rule (1) unless he furnishes a certificate that he is not engaged in any other employment, business, profession or vocation.

(3) The authority to grant subsistence allowance shall be the suspending authority.

### Government of India's Decisions

(1) G.I., M.H.A. Letter No. 13/7/58-AIS (III), dated 11th October, 1958, read with No. 7/20/59-AIS (II), dated 17th November, 1959.—The Government of India have decided that :

- (i) the amount of subsistence allowance once granted should be varied by the suspending authority under the first proviso to this rule only after recording in writing the reasons for increasing or decreasing the amount;
- (ii) a member shall not be entitled to compensatory allowance of which he was in receipt prior to suspension unless the suspending authority is satisfied that the continues to meet the expenditure for which they were granted.

(2) The Government of India have decided that the following deductions should be enforced from subsistence allowance :—

- (i) Income tax and super tax (Provided the member's annual income calculated with reference to subsistence allowance is taxable).

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1. Subs. by D.P. & A.R. Notification No. 28013/2/78-AIS (III), dated 12.1.1982 (G.S.R. No. 92 dated 30.1.1982)
  2. Subs. by D.P. & A.R. Notification No. 28013/2/78-AIS (III), dated 12.1.1982 (G.S.R. No. 92 dated 30.1.1982)



- (ii) House rent and allied charges *i.e.* electricity, water, furniture *etc.*
- (iii) Repayment of loans and advances taken from Government at such rates as the competent authority deems it right to fix.

(2.2) The following deductions should not be made except with a member's written consent letter—

- (a) premia due on Postal Life Assurance Policies.
  - (b) Amounts due to Co-operative Stores and Co-operative Credit Societies.
  - (c) Refund of advances taken from General Provident Fund.
- (2.3) The following deductions should not be made from subsistence allowance :—
- (i) Subscription to the All India Services Provident Fund.
  - (ii) Amounts due on Court attachments.
  - (iii) Recovery of loss to Government for which a member is responsible.

(2.4) **G.I., M.H.A. Letter No. 7/18/59-AIS (II), dated 21st October, 1959.**— There is no bar to the recovery of over payments from subsistence allowance but the competent authority will exercise direction in deciding whether recovery should be held wholly in abeyance during the period of suspension or it should be effected at full or reduced rate depending on the circumstances of each case.

(3) **G.I., M.H.A., Letter No. 7/8/62-AIS (III), dated 15th May, 1962.**—A question having arisen, it was decided that an officer (under suspension) is entitled to receive subsistence allowance at the rate equal to leave salary which he would have drawn while on leave on half average pay or half pay as the case may be, for the first twelve months. If after the expiry of that period, the competent authority does not find it necessary to increase or decrease the amount, the officer (under suspension) will continue to receive the same amount of subsistence allowance and it is not necessary to issue fresh orders in this regard.

#### NOTE

**List of witnesses.**—The document on record including document filed on behalf of respondent do not indicate any list of witnesses respondent to be examined. Contention that no list of witness examined was served on the applicant is correct. [*Arvind Kumar v. Union of India*, IV, 1998 (1), SLJ (CAT) 535 (Pat).]

**<sup>1</sup>[5. Admissibility of pay and allowances and treatment of service on reinstatement after dismissal removal or compulsory retirement as a result of appeal or review.]**—(1) When a member of the Service, who has been dismissed, removed or compulsorily retired is re-instated as a result of appeal or review or would have been so reinstated but for his retirement under the All India Services (Death-cum-Retirement Benefits) Rules, 1958 while under suspension or not, the authority competent to order reinstatement shall consider and make a specific order—

- (a) regarding the pay and allowances to be paid to the member of the Service for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be ; and
- (b) whether or not the said period shall be treated as a period spent on duty.

1. Subs. by DP & AR Notification No. 28013/2/78-AIS (III), dated 12.1.1982 (GSR No. 92, dated 30.1.1982).



(2) The member of the Service shall, subject to the provisions of sub-rule (6) be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, in cases :—

- (i) where the authority competent to order reinstatement is of opinion that the member of the service who had been dismissed, removed or compulsorily retired has been fully exonerated, or
- (ii) where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of Article 311 of the Constitution and no further inquiry is<sup>1</sup> proposed to be held :

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the member of the Service had been delayed due to reasons directly attributable to the member of the Service, it may, after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the member of the Service shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such proportion of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule (2) the member of the Service shall, subject to the provisions of sub-rules (6) and (7), be paid such proportion of the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the authority competent to order re-instatement may determine after giving notice to the member of the service of the quantum proposed and after considering the representation, if any, submitted by him, in that connection within 60 days from the date on which the notice aforesaid is served on the member of the Service.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the authority competent to order reinstatement specifically directs that it shall be so treated for any specified purpose :

Provided that if the member of the Service so desires, such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may

1. Subs. by D.P. & A.R. Notification No. 28013/2/78-AIS (III) dated 12.1.82 (G.S.R. No. 92, dated 30.1.1982).



be, shall be converted into leave of any kind due and admissible to the member of Service.

(6) The payment of allowances under sub-rule (2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.

(7) The proportion of the full pay and allowances determined under the proviso to sub-rule (2) or under sub-rule (4) shall neither be equal to the full pay and allowances nor less the subsistence allowance and other allowances admissible under Rule 4, as the case may be.

(8) Any payment made under this rule to a member of the Service on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the pay and allowances admissible under this rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the member of the Service.

**15-A. Admissibility of pay and allowances and treatment of service on reinstatement where dismissal, removal or compulsory retirement is set aside by a Court of Law.**—(1) Where the dismissal, removal or compulsory retirement of a member of the Service is set aside by a Court of Law and such member is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the member of the service shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the Court.

(2) (i) In cases other than those covered by sub-rule (3), the member of the service shall be paid such proportion of the full-pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired, or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the authority competent to order reinstatement may determine, after giving notice to the member of the Service of the quantum proposed and after considering the representation, if any, submitted by him, in that connection, within 60 days from the date on which the notice aforesaid is served on the member of the Service :

Provided that any payment under this sub-rule to a member of the Service shall neither be equal to the full pay and allowances nor less than the subsistence allowance and other allowances admissible under Rule 4 as the case may be.

(ii) The period intervening between the date of dismissal, removal or compulsory retirement, including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the Court shall be regularised in accordance with the provisions contained in sub-rule (5) of Rule 5.

(3) Where the dismissal, removal or compulsory retirement of a member of the Service is set aside by a Court on the merits of the case, or where the dismissal, removal or compulsory retirement of a member of the Service is set

1. Subs. by DP & AR Notification No. 28613/2/78-AIS (III), dated 12.1.1982 (GSR No. 92, dated 30.1.1982).



aside by a Court solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of Article 311 of the Constitution and no further enquiry is proposed to be held, the period intervening between the date of dismissal, removal compulsory retirement as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid full pay and allowances for the period to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsorily retirement, as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a member of the Service on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the dismissal, removal or compulsory retirement and the date of reinstatement. Where the pay and allowances admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the member of the service.

**15-B. Admissibility of pay and allowances and treatment of Service on reinstatement after suspension.**—(1) When a member of the Service under suspension is reinstated or would have been so reinstated but for his retirement under All India Services (Death-cum-Retirement Benefits) Rules, 1958 while under suspension, the authority competent to order reinstatement shall consider and make a specific order—

- (a) regarding the pay and allowances to be paid to the member of the Service for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be ; and
- (b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Rule 4, where a member of the Service under suspension dies before the disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance and other allowances already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the member of the Service shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended, subject to adjustment in respect of subsistence allowances and other allowances already paid :

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the member of the Service had been

1. Subs. by DP & AR Notification No. 6/9/73-AIS (III), dated 26.7.1975 (GSR No. 985, dated 9.8.1975).



delayed due to reasons directly attributable to the member of the Service, it may, after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the member of the Service shall be paid for the period of such delay only such proportion of such pay and allowances as it may determine.

(4) In case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3), the member of the Service shall be subject to the provisions of sub-rules (8) and (9) be paid such proportion of the full pay and allowances to which he would have been entitled had he not been suspended, as the authority competent to order reinstatement may determine, after giving notice to the member of the Service of the quantum proposed and after considering the representation, if any, submitted by him in that connection within <sup>1</sup>[Sixty days from the date on which the notice aforesaid is serviced on the member of the Service] as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary proceeding or proceedings in a Court any order passed under sub-rule (1) before the conclusion of the proceedings against the member of the Service, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order in accordance with the provisions contained in sub-rule (3) or sub-rule (5), as the case may be.

(7) In a case falling under sub-rule (5) the period of suspension shall not be treated as a period spent on duty, unless the authority competent to order reinstatement specifically directs that it shall be so treated for any specified purpose :

Provided that if the member of the Service so desires such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the member of the Service.

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The proportion of the full pay and allowance determined under the proviso to sub-rule (3) or under sub-rule (5) shall neither be equal to full pay and allowances nor shall it be less than the subsistence allowance and other allowances admissible under Rule 4.

### PART III

#### Penalties and Disciplinary Authorities

**6. Penalties.**—(1) The following penalties may, for good and sufficient reasons and as hereinafter provided be imposed on a member of the Service, namely—

1. Modified by DP & AR Notification No. 28313/2/78-AIS (III), dated 12.1.1982 (GSR No. 92, dated 30.1.1982).



*Minor Penalties:*

- (i) censure,
- (ii) withholding of promotions,
- <sup>1</sup>(iii) Recovery from pay of the whole, or part of any pecuniary loss caused to Government, or to a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by Government, or to a local authority set by an Act of Parliament or of the Legislature of a State, by negligence or breach of orders.
- (iv) withholding of increments of pay.

*Major Penalties*

- (v) reduction to a lower stage in the time scale of pay for a specified period with further directions as to whether or not the member of the Service will earn increments during the period of reduction and whether, on the expiry of such period, the reduction will or will not have the effect of postponing future increments of his pay;
- (vi) reduction to a lower time scale of pay, grade or post which shall ordinarily be a bar to promotion of the member of the Service to the time scale of pay, grade or post from which he was reduced, with or without further direction regarding conditions of restoration to the grade or post from which the member of the Service was reduced and his seniority and pay on such restoration to that grade or post;
- (vii) Compulsory retirement :

Provided that, if the circumstances of the case of warrant, the authority imposing the penalty may direct that the retirement benefits admissible to the member of the Service under the All India Services (Death-cum-Retirement Benefits) Rules, 1958, shall be paid at such reduced scale as may not be less than two-thirds of the appropriate scales indicated in Schedules 'A' and 'B' of the said rules.

- (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 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.

1. Subs. by DP & AR Notification No. 6/5/74-AIS (III), dated 28.7.1975 (GSR No. 988 Gazette, dated 9th August, 1975).



*Explanation.*—The following shall not amount to a penalty within the meaning of this rule, namely :—

- (i) withholding of increments of pay of a member of the Service for failure to pass a departmental examination in accordance with the rules or orders governing the service;
  - (ii) stoppage of a member of the Service at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;
  - <sup>1</sup>(iii) non-promotion of a member of the Service, whether in a substantive or officiating capacity to a post in the senior time-scale of pay on the ground of lack of adequate length of service and experience or non-confirmation in the service, or failure to pass the departmental examination;
  - (iii-a) non-promotion of a member of the Service, whether in a substantive or officiating capacity, after due consideration of his case to the selection grade or to a post carrying pay above the time-scale of pay.
  - (iv) reversion of a member of the Service officiating in a higher grade or post to which promotions are made by selection, to a lower grade or post after a period of trial not exceeding three years on the ground that he is considered unsuitable for such higher grade or post, or on any administrative ground unconnected with his conduct;
  - (v) reversion of a member of the Service, appointed on probation to the Service, to State Service, during or at the end of the period of probation, in accordance with the terms of appointment or the rules and orders governing such probation;
  - (vi) replacement of the services of a member of the service whose services have been borrowed from a State Government at the disposal of the State Government concerned;
  - (vii) compulsory retirement of a member of the Service under the provisions of the All India Services (Death-cum-Retirement Benefit) Rules, 1958;
  - (viii) termination of the service of a member of the Service, appointed on probation, during or at the end of the period of probation in accordance with the terms of the service or the rules and orders governing such probation.
- (2) <sup>2</sup>[     ].

#### Government of India's Decisions

(1) G.I., MHA Letter No. 414/4/58-Ests. (A), dated 14th October, 1958.—Termination of employment of a probationer during or at the end of the period of probation in accordance with the relevant provisions of Indian Administrative Service/Indian Police Service (Probation) Rules, 1954, does not amount to removal or

1. Subs. by DP & AR Notification No. 12/2/69-AIS (III)-C, dated 13.4.1971 (GSR No. 588, dated 24.4.1971).
2. Omitted by DP & AR Notification No. 31/7/72-AIS (III), dated 22.5.1973.



dismissal within the meaning of these rules and hence a formal inquiry in accordance with the procedure laid down in Rule 5 is not necessary in such cases. If, however, a probationer is removed or dismissed on disciplinary grounds mentioned in Rule 11(2) of Probation Rules he should be given an opportunity to show cause against the action proposed to be taken against him.

(2) **G.I., MHA Letter No. 9/7/58-AIS (II), dated 30th October, 1958.**—A question arose whether a member, who was appointed substantively to the Indian Police Service in the senior scale against the promotion quota, could be reduced to the rank of Assistant Superintendent of Police (a rank which he never held in his service) or whether it was necessary to reduce to the rank of Deputy Superintendent of Police (State Police Service) which he held before appointment to the Indian Police Service. Reduction in rank includes reduction to a lower post or to a lower time-scale. A member appointed to the Indian Police Service against the promotion quota could, therefore, be reduced to the junior scale of the Indian Police Service. On reduction to the junior scale, he would be shown against a Superintendent direct recruitment post in the junior scale like a State Police Officer appointed to the junior scale under the Special Recruitment Scheme. His pay and seniority, on reversion, would be regulated in accordance with the principles applicable to a State Police Service Officer appointed in the junior scale under the Special Recruitment Scheme.

(3) **DP & AR Letter No. 81018/5/79-AIS (III), dated 3rd April, 1981.**—The instructions contained in the Ministry of Home Affairs Letter No. 7/4/59-AIS (II) dated 20th March, 1959 and Letter No. 7/5/60-AIS (II), dated the 4th May, 1960 have been reviewed and the following clarification are given :—

- (i) It has been stated in the Ministry of Home Affairs Letter No. 7/5/60-AIS (II), dated 4th May, 1960, that if it is decided, on the conclusion of disciplinary proceedings not to impose any of the prescribed punishments but to administer a warning or reprimand, mention of it should be made in the Confidential Roll. The Delhi High Court in the case of *Shri Nadhan Singh v. The Union of India*, expressed the view that warning kept in the C.R. Dossier has all the attributes of 'Censure' which is a formal punishment and which can only be awarded by the competent authority after following the procedure prescribed in the relevant disciplinary Rules. It has, therefore, been decided that where it is considered, after the conclusion of the disciplinary proceedings, that some blame attaches to the officer concerned which necessitates cognizance of such fact, the disciplinary authority should award one of the recognised statutory penalties. If the intention of the disciplinary authority is not to award the penalty of censure, then no recordable warning or reprimand should be awarded.
- (ii) In the Ministry of Home Affairs Letter No. 7/4/59-AIS (II) of 20th March, 1959, it is stated that there may be occasions when a superior officer may find it necessary to criticise adversely the work of an officer working under him, and he may feel that while the matter is not serious enough to justify the imposition of a formal punishment, it calls for some informal action such as communication of a written warning, admonition or reprimand. It has now been decided that 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 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 II of the ACR form prescribed under the All India Services (Confidential Rolls) Rules, and in that case a copy of the warning/ displeasure/ reprimand referred to in the confidential report should be placed in the ACR 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 rules.

**7. Authority to institute proceedings and to impose penalty.**—<sup>1</sup>(1) Where a member of the Service has committed any act or omission which renders him liable to any penalty specified in Rule 6,—

- (a) if such act or omission was committed before his appointment to the Service,—
  - (i) the State Government, if he is serving in connection with the affairs of that State, or is deputed for service in any company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Government of that State or in a local authority set up by an Act of the Legislature or that State; or
  - (ii) the Central Government, in any other case, shall alone be competent to institute disciplinary proceedings against him and, subject to the provisions of sub-rule (2), to impose on him such penalty specified in Rule 6 as it thinks fit ;
- (b) If such act or omission was committed after his appointment to the Service,—
  - (i) while he was serving in connection with the affairs of a State, or is deputed for service under any company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a State, or in a local authority set up by an Act of the Legislature of that State, the Government of that State ;
  - <sup>2</sup>[(ii) while he was on training, the Central Government unless the selection for the training was done by the State Government and the cost of the training was entirely borne by the State Government.]
  - (iii) while he was on leave, the Government which sanctioned him the leave ; or

1. Subs. by DP & AR Notification No. 6/9/72-AIS (III), dated 5.7.1975 (GSR No. 872, dated 15.7.1975).

2. Subs. by G.S.R. 117, dated 25.8.1998.



- (iv) while he was under suspension, the Government which placed him or is deemed to have placed him under suspension ; or
- (v) if such act or omission is wilful absence from duty after the expiry of leave, the Government which sanctioned the leave ; or
- (vi) while he was absent from duty otherwise than on leave, the Government which would have been competent to institute disciplinary proceedings against him, had such act or omission been committed immediately before such absence from duty ; or
- (vii) the Central Government, in any other case, shall alone be competent to institute disciplinary proceedings against him and, subject to provisions of sub-rule (2), to impose on him such penalty specified in Rule 6 as it thinks fit, and the Government, company associations, body of individuals, or local authority, as the case may be under whom he is serving at the time of institution of such proceedings shall be bound to render all reasonable facilities to the Government instituting and conducting such proceedings.

*Explanation.*—For the purposes of clause (b) of sub-rule (1) where the Government of a State is the authority competent to institute disciplinary proceedings against a member of the Service, in the event of a reorganisation of the State, the Government on whose cadre he is borne after such reorganisation shall be the authority competent to institute disciplinary proceedings and, subject to the provisions of sub-rule (2), to impose on him any penalty specified in Rule 6.

<sup>1</sup>(1-A) Notwithstanding anything contained in sub-rule (1) the Director, Lal Bahadur Shastri National Academy of Administration, the Director Sardar Vallabhbhai Patel National Police Academy or the President, Forest Research Institute and Colleges, shall be empowered to initiate disciplinary proceedings against a probationer who is undergoing training at the Lal Bahadur Shastri National Academy of Administration. Sardar Vallabhabhai Patel National Police Academy or Forest Research Institute and Colleges, as the case may be, in respect of any misconduct or misbehaviour during the period he spends at the said Academy/Institute in accordance with the prescribed procedure laid down in Rule 10 of these rules. Thereafter the Director/President shall refer the case to the Central Government with the relevant records for passing orders under Rule 6 in consultation with the Commission.

<sup>2</sup>(1-B) Notwithstanding anything contained in sub-rule (1),<sup>3</sup> if, in any case, a question arises as to the Government competent to institute disciplinary

1. Ins. by DP & AR Notification No. 11018/4/76-AIS (III), dated 25.2.1977 (GSR No. 358, dated 19.3.1977).
2. Subs. by DP & AR Notification No. 6-9-72-AIS (III), dated 5.7.1975 (GSR 872, dated 19.7.1975).
3. Re-numbered by DP & AR Notification No. 11018/4/76-AIS (III), dated 25.2.1977, (GSR No. 358, dated 19.3.1977).



proceedings, it shall be decided by the Central Government and the Government so decided by the Central Government, as being competent to institute disciplinary proceedings (which may include the Central Government also), shall alone be competent to institute disciplinary proceedings against him and, subject to the provisions of sub-rule (2), to impose on him such penalty specified in Rule 6 as it thinks fit, and the Government, company association, body of individuals, or the local authority, as the case may be, under whom he is serving at the time of the institution of such proceedings shall be bound to render all reasonable facilities to the Government instituting and conducting such proceedings.

(2) The penalty of dismissal, removal or compulsory retirement shall not be imposed on a member of the Service except by an order of the Central Government.

(3) Where the punishing Government is not the Government on whose cadre the member is borne, the latter Government shall be consulted before any penalty specified in Rule 6 is imposed :

<sup>1</sup>Provided that in relation to the members of the Service borne on a Joint Cadre, the punishing Government shall consult the Joint Cadre Authority :

Provided <sup>2</sup>further that where the Government concerned are the Central Government and the State Government or two State Governments and there is a difference of opinion between the said Government in respect of any matter referred to in this rule, the matter shall be referred to the Central Government for its decisions, which shall be passed in consultation with the Commission.

## PART IV

### Procedure for Imposing Penalties

**8. Procedure for imposing major penalties.**—(1) No order imposing any of the major penalties specified in Rule 6 shall be made except after an inquiry is held as far as may be, in the manner provided in this rule and Rule 10, or, 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 member of the Service, it may appoint under this rule or under the provisions of the Public Servants (Inquiries) Act,<sup>3</sup> 1850, as the case may be, an authority to inquire into the truth thereof.

<sup>4</sup>[Provided that, where there is a complainant of sexual harassment within the meaning of Rule 3 of the All India Service (Prevention of Sexual Harassment) Regulations, 1998, 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

1. Subs. by Deptt. of Personnel Notification No. 13/4/71-AIS (I), dated 11.1.1972.
2. *Ibid.*
3. Circulated by 2506/80-AIS (III), dated 5th August, 1950.
4. Ins. by Noti. No. GSR 408(E), dated 10th June, 2014.



separate procedure has not been made for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable, in accordance with the procedure laid down in these rules.]

(3) Where a Board is appointed as the inquiring authority it shall consist of not less than two senior officers provided that at least one member of such a Board shall be an officer of the service to which the member of the service belongs.

(4) Where it is proposed to hold an inquiry against a member of the Service under this rule and/or Rule 10, the disciplinary authority shall draw up or caused 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 member of the Service;
  - (b) a list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be sustained.

1[(5) (a) The disciplinary authority shall deliver or cause to be delivered to the member of the Service 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 charge is proposed to be sustained.

(b) On receipt of the articles of charge the member of Service shall be required to submit his written statement of defence, if he so desires, and also state whether he desires to be heard in person, within a period of thirty days, which may be further extended for a period not exceeding thirty days by recording reasons in writing by the disciplinary authority or any other authority authorised by the disciplinary authority on his behalf :

Provided that under no circumstances, the extension of time for filing written statement of defence shall exceed ninety days from the date of receipt of articles of charge.]

(6) (a) On receipt of the written statement of defence the disciplinary authority may appoint, under sub-rule (2), an inquiring authority for the purpose of inquiring into such of the articles of charge as are not admitted, and, where all the articles of charge have been admitted by the member of the Service in his written statement of defence, the disciplinary authority shall record its finding on each charge and shall act in the manner laid down in Rule 9.

(b) If no written statement of defence is submitted by the member of the Service, the disciplinary authority may, if it considers it necessary to do so, appoint, under sub-rule (2), an inquiring for the purpose.

(c) Where the disciplinary authority appoints an inquiring authority for holding an inquiry into such it may be 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.

- (7) The disciplinary authority shall forward to the inquiring authority—
- (i) a copy of the articles of charge and the statement of imputations of misconduct or misbehaviour.
  - (ii) a copy of the written statement of defence, if any, submitted by the member of the Service ;
  - (iii) a copy of the <sup>1</sup>[statements] of witnesses, if any, referred to in sub-rule (4) ;
  - (iv) evidence proving the delivery of the documents referred to in sub-rule (4) to the member of the Service ; and
  - (v) a copy of the order appointing the "Presenting Officer."

(8) The member of the Service shall be required to appear in person before the inquiring authority at any time prescribed after the expiry of ten working days from the date of receipt of the articles of charge and the statement of imputations of misconduct or misbehaviour, or within such further time, not exceeding ten days, as the inquiring authority may allow.

(9) (a) The member of the Service may take the assistance of any other Government Servant 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.

<sup>2</sup>(b) A member of the Service 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.

<sup>3</sup>**Note.**—The member of the Service shall not take the assistance of any other Government servant who has two or more pending disciplinary cases on hand in which he has to give assistance.

(10) If the member of the Service 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 if he pleads guilty to any of the article of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the member of the service thereon.

(11) The inquiring authority shall return a finding of guilt in respect of (those) articles of charge to which the member of the Service pleads guilty.

1. Subs. by DP & AR Notification No. 6/9/72-AIS (III), dated 5.7.1975 (GSR No. 872, dated 19.7.1975).
2. Ins. by DP & AR Notification No. 11028/4/76-AIS (III), dated 17.7.1977, (GSR No. 983, Gazette dated 30.7.1977).
3. Ins. by DP & AR Notification No. 11018/12/77-AIS (III), dated 31.5.1978, (GSR No. 753, Gazette dated 17.6.1978).



(12) The inquiring authority shall, if the member of the Service 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 to case to a later date, not exceeding thirty days, after recording an order that the member of the Service 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 document specified in the list referred to in sub-rule (4) ;
- (ii) submit a list of witnesses to be examined on his behalf.

**Note.**—If the member of the Service applies orally or in written for the supply of copies of the statement of witnesses mentioned in the list referred to in sub-rule (4), 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 (4).

**Note.**—The member of the Service shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

(13) 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 document 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 are, in its opinion, not relevant to the case.

(14) On receipt of the requisition referred to in sub-rule (13), 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 member of the Service and withdraw the requisition made by it for the production or discovery of such documents.

(15) 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 member of the Service. 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.

(16) 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 member of the Service or may itself call for new evidence or recall and re-examine any witness and, in such case, the member of the Service 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 to the member of the Service an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the member of the Service to produce new evidence, if it is of opinion that the production of such evidence is necessary in the interests of justice.

**Note.**—New evidence shall not be permitted or called for 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.

(17) When the case for the disciplinary authority is closed, the member of the Service 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 member of the Service 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.

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

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

(20) The inquiring authority may, after the completing of the production of evidence, hear the Presenting Officer, if any appointed, and the member of the Service or permit them to file written briefs of their respective cases, if they so desire.

(21) If the member of the Service, 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*.

(22) (a) Where a State Government which has caused to be inquired into the articles of any charge and, 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 (vii) to (ix) of Rule 6 should be imposed on the member of the Service, the State Government shall forward the records of the inquiry to the Central Government suggesting imposition of the penalties specified in clauses (vii) to (ix) of Rule 6 as is competent to impose the last mention penalty.

(b) The Central Government 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 interest of justice, recall the witness and examine, cross-examine and re-examine such witnesses. If the Central Government do not find justification for imposing one of the penalties specified in clauses (viii) to (ix) of Rule 6 in a case referred to it by a State Government, then it shall refer it back to the State Government.

(23) Whenever an 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 witness as hereinbefore provided.

(24) (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 imputations of misconduct or misbehaviour ;
- (b) the defence of the member of the Service in respect of each article of charge ;
- (c) an assessment of the evidence in respect of each article of charge; and
- (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 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 member of the Service 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 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 member of the Service;
- (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 member of the Service 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.

<sup>1</sup>[(25) (a) The Inquiring Authority should conclude the inquiry and submit his report within a period of six months from the date of receipt of order of his appointment as Inquiring Authority.

(b) Where it is not possible to adhere to the time limit in clause (a), the Inquiring Authority may record the reasons and seek extension of time from the disciplinary authority in writing, who may allow an additional time not exceeding six months for completion of the inquiry.

(c) The extension for a further period not exceeding six months at a time may be allowed for any good and sufficient reasons to be recorded in writing by the disciplinary authority or any other authority authorised by the disciplinary authority on his behalf.]

### NOTES

**Applicability.**—Rule 8(15) of the All India Services (Discipline and Appeal) Rules, 1969 provides that both the oral and documentary evidence by which the articles of charge are proposed to be proved by the disciplinary authority shall be produced on the date fixed for the enquiry; witnesses on behalf of the disciplinary authority may be examined both in chief as well as cross, etc. It is obvious from the Rule that the rule cannot have any application where the delinquent officer admits the correctness of the factual allegations against him. [*Vijay Shankar Pandey v. Union of India*, AIR 2015 SC 326].

**Disciplinary proceeding.**—There is no illegality in the observation of I.O. as it is the discretion of I.O. to see the things in given facts and circumstances of the case and to follow the procedure laid down for the purpose of conducting inquiry. As per rules it is nowhere mentioned that on closure of defence witnesses applicant may ask to depose himself as defence witness. Since he has lost an opportunity to do so before closure of defence evidence, therefore, the order passed by the I.O. on his application calls for no interference of this Court as it is the I.O. who has to take a decision on his application which was otherwise open for challenge to the applicant which he has not done, thus now he cannot raise this objection. [*M.P. Bidlan, I.A.S. v. Union of India*, 2007 (3) SLJ 120 (CAT)].

**Disciplinary proceedings—Non-compliance of mandatory requirement.**—Rule 8(4) of the All India Services (Discipline and Appeal) Rules, 1969 mandates that the disciplinary authority shall "draw up or cause to be drawn up" the charge memo. The initiation of disciplinary proceedings and issuance of charge memo are at the same stage, the mandatory requirement of Rule 8 of the All India Services (Discipline and

1. Ins. by G.S.R. 59(E), dated 20th January, 2017 (w.e.f. 20-01-2017).



Appeal) Rules, 1969 which provides for the charge memo to be drawn by the disciplinary authority cannot be ignored.

It is also settled law that if the rule requires something to be done in a particular manner it should be done either in the same manner or not at all. [*Taylor v. Taylor*, (1875) 1 Ch D 426, 431.] In view of the mandatory requirement of Rule 8(4) of the All India Services (Discipline and Appeal) Rules, 1969 and the charge memo being drawn up or cause to be drawn up by the disciplinary authority is not complied with, there is no reason to interfere with the judgment of the High Court. However, liberty is given to the disciplinary authority to issue a charge memo afresh after taking approval from the disciplinary authority. [*State of Tamil Nadu Rep. By Secretary To Govt. (Home) v. Promod Kumar IPS*, AIR 2018 SC 4060 : 2018 (4) JCR SC 188 : 2018 (10) Scale 157 (SC)].

### Government of India's Decisions

(1) **G.I., M.H.A. Letter No. 7/7/59-AIS (III), dated 11.5.1959.**—The hearing in person, referred to in sub-rule (3), is really in the course or the inquiry to follow. Member of the service has the option to say that the inquiry may proceed on the strength of the written statement filed by him and he does not wish to participate in person in the inquiry.

(2) It is not necessary to hear the member concerned in person before the inquiry starts. It is sufficient if an opportunity of personal hearing is given to him in the course of the inquiry. If, however, the Government propose to inquire into the charges in such manner as they deem fit (and not by a Board of an Inquiry or an Inquiry Officer) and the member desires to be heard in person Government will have to appoint an inquiring authority as required by sub-rule (6). In other words, whenever a member desires to be heard in person, a Board of Inquiry or an Inquiry Officer will have to be appointed, Government can inquire into charges in such manner as they deem fit, only in cases where the member does not wish to be heard in person.

(3) **Hukum Chand Malhotra v. Union of India.**—**G.I., M.H.A. F. No. J/5/59-AIS (I).**—The Supreme Court has held in an appeal filed before them that the mention of more than one punishment in the show cause notice, does not violate the provisions of Articles 311(2) of the Constitution. On the contrary, it gives the Government servant a better opportunity to show cause against each of the punishments, proposed to be inflicted on him, which he would not have had, if only the severest punishment had been mentioned and a lesser punishment, not mentioned in the notice had been inflicted on him. [Deleted by Letter No. 11018/4/79-AIS (III), dated 26.6.1979].

### <sup>1</sup>EXECUTIVE INSTRUCTIONS

**9. Action on the inquiry report.**—(1) The disciplinary authority may, for reasons to be recorded by it in writing, remit the case to 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 1 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

1. Letters No. 11011/19/78-AIS (III), dated 14th January, 1979 and No. 11218/8/81-AIS (III), dated 26th November, 1981.



<sup>1</sup>[(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 6, shall be imposed on the member of the Service, it shall notwithstanding anything contained in Rule 10, make an order imposing such penalty in such manner as specified by the Government.

(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 6 shall be imposed on the member of the Service, it shall make an order imposing such penalty in such manner as specified by the Government.

(5)(a) In every case the disciplinary authority shall forward or cause to be forwarded to the Commission for its advice—

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

(b) The disciplinary authority shall forward or cause to be forwarded a copy of the advice of the Commission received under clause (a) to the member of Service, who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within a period of fifteen days, on the advice of the Commission, which may be extended for a further period not exceeding fifteen days by recording the reasons in writing by the disciplinary authority or any other authority authorised by the disciplinary authority on his behalf :

Provided that under no circumstances, the extension of time shall exceed forty-five days from the receipt of advice of the Commission by the member of Service.

(c) The advice of the Commission received under clause (a) and the representation of the member of Service on such advice shall be taken into consideration before making any order imposing any penalty on the member of Service.]

### **Government of India's Decisions**

(1) G.I., M.H.A. Letter No. 7/1/59-AIS (II), dated 9th June, 1958 read with Letter No. 73/80-AIS (II), dated 17th March, 1960.—When a member is adjudged guilty of committing any act or omission which renders him liable to any of the penalties specified in Rule 3 other than dismissal, removal or compulsory retirement, the State Government under whom he was serving at the time of such act or omission, shall make a reference direct to the Union Public Service Commission for their advice as to the quantum of penalty to be imposed on him. The Commission would communicate their advice direct to the State Government concerned under intimation to the Department of Personnel and AR in the case of IAS and the Ministry of Home Affairs in the case of IPS and the Department of Agriculture in case of IFS. The State

1. Subs. by G.S.R. 59(E), dated 20th January, 2017 (w.e.f. 20-01-2017).



Government should endorse copies of their final orders to the Commission and the Ministry of Home Affairs. If, however, the State Government do not accept the advice of the Commission in any case, they will have to make a reference to the Government of India in accordance with the proviso to Rule 6.

Cases referred to the Commission and the Government of India should be complete in all respects. All the documents in connection with the case should invariably be forwarded in original.

**10. Procedure for imposing minor penalties.**—(1) Subject to the provision of sub-rule (3) of Rule 9, no proper imposing on a member of the Service any of the penalties specified in clauses (i) to (iv) of Rule 6 shall be made except after—

- (a) informing the member of the Service 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 a 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 (6) to (23) of Rule 8, [in every case in which it is proposed to withhold increments of pay for a period exceeding three years, or with cumulative effect for any period, or so as to adversely affect the amount of pension payable to him, or in which the disciplinary authority is of the opinion that such inquiry is necessary].
  - (c) taking the representation, if any submitted by the member of the Service under clause (a), and the record of inquiry, if any, held under clause (b) into considerations ;
  - (d) recording a finding on each imputation of misconduct or misbehaviour ; and
  - (e) consulting the Commission.
- (2) The record of proceedings in such cases shall include—
- (i) a copy of the intimation to the member of the Service 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 ;
  - (vi) the findings on each imputation of misconduct or misbehaviour; and
  - (vii) the orders on the case together with the reasons therefor.

**11. Cases of difference of opinion to be referred to Central Government.**—When there is any difference of opinion between a State

1. Subs. by DP & AR Notification No. 6/9/72-AIS (III), dated 5.7.1975 (GSR No. 872, dated 19.7.1975).



Government and the Commission on any matter covered by these rules such matter shall be referred to the Central Government for its decision.

**12. Communication of orders.**—Orders made by the disciplinary authority shall be communicated to the member of the Service who shall also be supplied with a copy of the report of the inquiring authority and a statement of the finding of the disciplinary authority, together with brief reasons for its disagreements, if any, with the findings of the inquiring authority (unless they have already been supplied to him 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.

**13. Common proceeding.**—Where two or more members of the Service are concerned in any case, the Government may make an order directing that disciplinary action against all of them may be taken in a common proceedings.

**14. Special procedure in certain cases.**—Notwithstanding anything contained in Rules 8 to 12—

- (i) where any penalty is imposed on a member of the Service 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 an 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 member of the Service may be given an opportunity of making a representation on the penalty proposed to be imposed before any order is made in a case under clause (i) or this rule :

Provided further :

<sup>1</sup>Provided that except in cases where consultation with the Union Public Service Commission (Exemption from Consultation) Regulations, 1958, the Union Public Service Commission shall be consulted before any order is made in any case under this rule.

## PART V

### Appeals

**15. Orders against which no appeal lies.**—(1) Notwithstanding anything contained in this part, no appeal shall lie against :—

- (i) any order made by the President ;

1. Subs. by Department of Per & AR Notification No. 6/5/74-AIS (III), dated 28.7.1975 (GSR No. 988, Gazette, dated 9th August, 1975).



- (ii) any order of an interlocutory nature or of the nature of steps-in-aid for 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 inquiry under Rule 8 ;
- (iv) any order by a competent authority withholding an appeal under Rule 23.

(2) Nothing in clauses (i) and (iv) of sub-rule (1) shall be deemed to affect or abridge the right of a member of the Service to submit a memorial to the President under, and in accordance with, the provisions of Rule 26.

**16. Orders against which appeal lies.**—Subject to the provisions of Rule 15 and the explanations to Rule 6, a member of the Service may prefer an appeal to the Central Government against all or any of the following orders, namely :—

- (i) an order of suspension made or deemed to have been made under Rule 3 ;
- (ii) an order passed by a State Government imposing any of the penalties specified in Rule 6 ;
- (iii) an order of a State Government which—
  - (a) denies or varies to his disadvantage his pay, allowances, <sup>1</sup>[\* \* \*] or other conditions of service as regulated by rules applicable to him ; or
  - (b) interprets to his disadvantage the provisions of any such rule ; or
  - (c) has the effect of superseding him in promotion to a selection post ;
- (iv) an order of the State Government,—
  - (a) stopping him at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar ; or
  - (b) reverting him while officiating in a higher grade or post to a lower grade or post, otherwise than as a penalty ; or
  - <sup>2</sup>(c) *deleted*.
  - (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 ; or

determining his pay and allowances—

- (i) for the period of suspension, or

1. The words 'pension' deleted by DP & AR Notification No. 6/9/72-AIS (III), dated 5.7.1975 (GSR No. 872, dated 19.7.1975).  
 2. Subs. by DP & AR Notification No. 6/2/72-AIS (III), dated 5.7.1975 (GSR No. 872, dated 19.7.1975).



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

<sup>1</sup>*Explanation.*—In this rule, the expression 'member of the Service' includes a person who has ceased to be a member of the service.

### Government of India's Decisions

**G.I., M.H.A. Letter No. 13/4/61-P (V), dated 5th May, 1961.**—I.P.S. Officers serving with the Government of India on deputation or their Heads of Departments, should not enter into direct correspondence with the State Government or the Inspector General of Police concerned on matters relating to service conditions. The correspondence in this regard should invariably be between the borrowing and the lending Governments. Representations from such officers are, therefore, to be routed through the Ministry of Home Affairs and not sent to the State Government or the Inspector General of Police of the State.

**G.I., M.H.A. Letter No. 32/56/56-AIS (II), dated 11th January, 1957.**—No appeal lies to the Government of India under these rules in respect of matters pertaining to a period prior to officer's appointment to the Indian Administrative Service/Indian Police Service.

### NOTE

The word 'ordinarily' is antonym of extraordinary and an application filed without exhausting departmental remedy is premature and cannot be entertained. [*R.K. Singh v. Union of India*, 1999 (2) SLJ 479 (CAT).]

**17. Period of limitation of appeals.**—No appeal preferred under these rules shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copy of the orders<sup>2</sup> 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.

**18. Form and content of appeal.**—(1) Every member preferring an appeal shall do so separately and in his own name.

(2) Every appeal preferred under these rules shall be addressed to the Secretary to the Government of India in the Department or the Ministry, as the case may be, dealing with the All India Service concerned and shall—

1. Deleted by DP & AR Notification No. 6/9/72-AIS (III), dated 5.7.1975 (GSR No. 872, dated 19.7.1975).
2. Subs. by DP & AR Notification No. 6/9/72-AIS (III), dated 5.7.1975 (GSR No. 872, dated 19.7.1975).



- (a) contain all materials statements and arguments relied on by the appellant ;
- (b) contain no disrespectful or improper language ; and
- (c) be complete in itself.

(3) Every such appeal shall be submitted through the head of the office under whom the appellant is for the time being serving and through the Government from whose order the appeal is preferred.

<sup>1</sup>[(4) (a) The authority which made the order appealed against shall, on receipt of a copy of every appeal, which is not withheld under Rule 21, forward the same with its comments thereon together with the relevant records to the appellate authority within thirty days from the receipt of the appeal by the State Governments and without waiting for any direction from the Central Government; and

(b) If the original appeal along with the comments of the State Government is not received by the Central Government within stipulated period, the Central Government shall take a decision on the advance copy of the appeal received by them.]

**19. Consideration of appeal.**—(1) In the case of an appeal against an order of the State Government imposing any penalty specified in Rule 6, the Central Government shall consider—

- (a) whether the procedure laid down in these rules has been complied with, and, if not, whether such non-compliance has resulted in violation of any provision 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 record ; and
- (c) whether the 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 the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case :

Provided that—

- <sup>2</sup>(i) the Commission shall be consulted before an order confirming, enhancing, reducing or setting aside a penalty is passed;
- (ii) if the enhanced penalty which the Central Government proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 8 has not already been held in the case, the appellate authority shall, subject to the provisions

1. Subs. by G.S.R. 1001(E), dated 21st December, 2015 (w.e.f. 23- 12-2015).

2. Subs. by DP & AR Notification No. 6/9/72-AIS (III), dated 5.7.1975 (GSR No. 872, dated 19.7.1975).



of Rule 14, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 8 and thereafter, on a consideration of the proceedings of such inquiry <sup>1</sup>[ ] make such orders as it may deem fit ;

- (iii) if the enhanced penalty which the Central Government proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 8 has already been held in the case, the Central Government shall, <sup>2</sup>[ ] make such orders as it may deem fit ; and
- (iv) 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 10, of making representation against such enhanced penalty.

(2) In an appeal against any other order specified in Rule 16 the Central Government shall consider all the circumstances of the case and make such orders as it may deem just and equitable.

**20. Implementation of orders on appeal.**—Every order passed by the Central Government in appeal under any of the relevant provisions of these rules shall be final and the State Government concerned shall forthwith give effect to such order.

**21. Circumstances in which appeals may be withheld.**—(1) The State Government, from whose order an appeal is preferred, may withhold the appeal if—

- (a) it is an appeal in a case in which under these rules there is no right of appeal, or
- (b) it does not comply with the provisions of Rule 18, or
- <sup>3</sup>(c) it is not preferred within the period specified in Rule 17 and no reasonable cause is shown for the delay, or
- (d) it is a repetition of a previous appeal which has already been decided and no new facts or circumstances are adduced which afford grounds for a reconsideration of the case.

(2) In every case in which an appeal is withheld, the appellant shall be informed of the fact and the reasons therefor.

(3) An appeal withheld on account only of failure to comply with the provisions of Rule 18 may be resubmitted at any time within one month of the date on which the appellant has been informed of the withholding of the appeal, and, if resubmitted in a form which complies with the said provisions, shall not be withheld.

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1. Deleted by Notification No. 110181/5/78-AIS (III), dated 13.10.1981, (GSR No. 959, dated 31.10.1981).
  2. Deleted by Notification No. 110181/5/78-AIS (III) dated 13.10.1981 (G.S.R. No. 959, dt 31.10.1981)
  3. Subs. by D.P. & A.R. Notification No. 6/9/72-AIS (III), dt 5.7.1975 (G.S.R. No. 872 dt. 19.7.1975)



**22. List of appeals withheld.**—The State Government shall forward to the Central Government on the first day of January and July every year a list of appeals to the Central Government withheld by them under Rule 21 during the preceding six months together with the reasons for withholding the same.

**23. Appellate authority may call for any appeal withheld.**—The Central Government may call for any appeal which has been withheld by any State Government under Rule 21, dealt with it in the manner laid down in Rule 19 and pass such orders thereon as the Central Government thinks fit.

#### <sup>1</sup>PART VI

### Revision, Review and Memorials

**<sup>2</sup>24. Revision.**—(1) Notwithstanding anything contained in these rules, the Central Government or the State Government concerned, as the case may be, may at any time not exceeding 6 months from the date of the order passed in appeal, if an appeal has been preferred, and where no such appeal had been preferred within one year of the original order which gives the cause of action, either on its own motion or otherwise call for the records of any order relating to suspension or any inquiry and<sup>3</sup> revise any order made under these rules or under the rules repealed by Rule 30 from which an appeal is allowed. But from which no appeal has been preferred or from which no appeal is allowed, <sup>4</sup>[ ] 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 directing such authority to make such further inquiry as it may consider proper in the circumstances of the case ; or
- (d) pass such orders as it may deem fit :

Provided that no order imposing or enhancing any penalty shall be made unless the member of the service 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 6 or to enhance the penalty imposed by the order sought to be <sup>1</sup>revised to any of the penalties specified in these clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 8 and<sup>5</sup> except after consultation with the Commission :

1. Subs. by DP & AR Notification No. 11018/19/81-AIS (III), dated 3.2.1984 (GSR No. 162, dated 18.2.1984).
2. Ibid.
3. Ibid.
4. Deleted by DP & AR Notification No. 6/9/72-AIS (III), dated 5.7.1975 (GSR 872, dated 19.7.1975).
5. Deleted by DP & AR Notification No. 11018/15/78-AIS (III), dated 13.10.1981 (GSR No. 959, dated 31.10.1981).



Provided further that where the original order was passed by the Central Government or the State Government concerned, as the case may be, after consultation with the Commission, it shall not be revised except after consultation with the Commission.

(2) No proceeding for <sup>1</sup>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 <sup>2</sup>revision shall be dealt with in the same manner as if it were an appeal under these rules.

#### NOTE

**Permission to revise.**—When imposition of the major penalties requires permission of Central Govt. which is explicitly expressed in Rule 8(22) of All India Services (D&A) Rules, 1969, and there is no mention in this regard to obtain Central Govt. permission under Rule 24 of All India Services (D&A) Rules, 1969 specific permission requires clarification.

For applying Rule 24 of All India Services (D&A) Rules, no permission is necessary from the Central Govt. so far as it relates to order for fresh enquiry. [*K. Inbasaquran v. Govt. of India*, 1998 (1) SLJ (CAT) 466 (Hyd).]

<sup>3</sup>[24-A. **Review.**—The Central Government may at any time, either on its 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 its notice :

Provided that no order imposing or enhancing any penalty shall be made by the Central Government unless the member of the Service 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 6 or to enhance a minor penalty imposed by the order sought to be reviewed to any of the major penalties and if an enquiry under Rule 8 has not already been held in the case, no such penalty shall be imposed except after inquiring in the manner laid down in Rule 8, subject to the provisions of Rule 14, and except after consultation with the Commission.

**25. Memorials.**—(1) A member of the Service shall be entitled to submit a memorial to the President against any order of Central Government or the State Government by which he is aggrieved within a period of three years from the date of the passing of such order.

<sup>4</sup>**Explanation.**—In this sub-rule, the expression 'member of the Service' includes a person who has ceased to be a member of the Service.

1. Subs./Ins. by DP & AR Notification No. 11018/19/81-AIS (III), dated 3.2.1984 (GSR No. 192, dated 18.2.1984).
2. Subs./Ins. by DP & AR Notification No. 11018/19/81-AIS (III), dated 3.2.1984 (GSR No. 192, dated 18.2.1984).
3. Ibid.
4. Ins. by DP & AR Notification No. 6/9/72-AIS (III), dated 5.7.1975 (GSR No. 872, dated 19.7.1975).



(2) Every such memorial shall be authenticated by the signature of the memorialist and submitted by the memorialist on his own behalf.

(3) Every memorial submitted under these rules shall—

- (a) contain all material statements and arguments relied up by the memorialist;
- (b) contain no disrespectful or improper language ;
- (c) be complete in itself; and
- (d) end with a specific prayer.

<sup>1</sup>[(4) (a) If the memorial is against the orders of a State Government, it shall be submitted through the State Government concerned and if the memorial is against the orders of the Central Government, it shall be submitted through the Ministry or the authority concerned in the Central Government, and the State Government concerned, or as the case may be, the Ministry or authority in the Central Government shall forward the same together within thirty days from the receipt of the memorial by the State Governments with a concise statement of facts material thereto and, unless there are special reasons to the contrary, with an expression of its opinion thereon; and

(b) If the original memorial alongwith the comments of the Ministry or the State Government concerned. or as the case may be, is not received by the Central Government within stipulated period, the Central Government shall take decision on the advance copy of the memorial received by them.]

<sup>2</sup>(5) A memorial submitted under the proviso to sub-rule (4) shall be referred to the State Government, or as the case may be, to the Ministry or authority in the Central Government, whose orders the memorial is submitted and the State Government concerned or, as the case may be, the Ministry or authority in the Central Government, shall return the memorial together with a concise statement of facts material thereto, and unless there are special reasons to the contrary, with an expression of its opinion thereon.

(5-A) If the memorial is against an order imposing any of the penalties specified in Rule 6, no such order shall be revised except after consultation with the Constitution.

(6) The authority against whose orders a memorial is submitted under this rule shall give effect to any order passed thereon by the President.

#### NOTE

**Memorials to President.**—Failure to prefer appeal or review is no bar in submission of Memorials to President. [*Markandey Singh IPS v. M.L. Bhanot IPS*, 1998 (2) UJ (SC) 195 : (1988) 3 SCC 539 : (1980) 19 Reports (SC) 613].

**26. Forwarding of advance copies.**—In cases where an appeal is preferred or a memorial is submitted under these rules, the appellant or the memorialist, as the case may be, may if he so desires, forward an advance copy to the

1. Subs. by G.S.R. 1001(E), dated 21st December, 2015 (w.e.f. 23- 12-2015).
2. Subs. by DP & AR No. 11018/7/79-AIS (III), dt. 11.11.1980 (G.S.R. No. 1220, dated 29.11.1980).



appellate authority in the case of an appeal or to the President of India in the case of a memorial.

## PART VII

### Miscellaneous

**27. Service of orders, notices etc.**—Every order, notice and other process made or issued under these rules shall be served in person on the member of the service concerned or communicated to him by registered post.

**28. Power to relax time limit and condone delay.**—Save as otherwise expressly provided in these rules the Central Government or the State Government, as the case may be, 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.

**29. Supply of copy to 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 member of the Service concerned along with a copy of the order passed in the case.

**30. Repeal and Saving.**—(1) The All India Services (Discipline and Appeal) Rules, 1955, are hereby repealed :

Provided that—

- (a) Such repeal shall not affect the previous operation of the said rules, 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 hereby repealed (hereinafter referred to as the repealed rules).

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

(4) As from the commencement of these rules any appeal or application for review against any order made before such commencement under the repealed Rules 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 the rules.

**31. Removal of doubts.**—Where a doubt arise as to the interpretation of any of the provisions of these rules, the matter shall be referred to the Central Government for its decision.

[No. 7/15/63-(II), dated 20.3.1969 (GSR No. 926, dated 12.4.1969)].



## EXECUTIVE INSTRUCTIONS

*Copy of Department of Personnel and A.K. No. 1108/7/82-AIS (III),  
dated 13th July, 1983, addressed to Chief Secretaries  
of all State Governments*

**Subject.**—All India Services (Discipline and Appeal) Rules, 1969—Disciplinary cases—Timely and complete reference to Union Public Service Commission.

I am directed to invite a reference to Letter No. 6/6/72-AIS (III), dated the 8th January, 1973 issued by the Department of Personnel on the subject mentioned above, and to say that as a sequel to the amendment of Article 311(2) of the Constitution and the provisions contained in Rules 9, 19 and 24, of the All India Services (Discipline and Appeal) Rules, 1969 it is no longer necessary to issue a show-cause notice, in cases where the disciplinary authority proposes to impose any of the major penalties or where it is proposed to enhance an existing penalty. As a result some changes in the proforma to be used for consulting the Union Public Service Commission have become necessary. It has also been found necessary to make certain modifications in Items 1, 2, 4, 7, 12 and 13 of the proforma. Revised proforma which may hereafter be used for consulting the UPSC is forwarded herewith.

It has been observed by the Commission that, even though the proforma clearly provides that it should be signed by an officer of the State Governments *etc.*, making the reference, in some cases the proforma is forwarded to the Commission without ensuring that entries contained herein are appropriate and reflect the correct position. The importance of making correct entries in the proforma cannot be over emphasised. It is, therefore, requested that it may kindly be ensured that reference to the Commission in disciplinary cases are made to the Commission in the prescribed proforma complete in all respects, duly signed by an officer of the State Government.

<sup>1</sup>[SCHEDULE]

1. *Composition of Review Committees.*—(a) The Review Committee constituted by the Central Government shall consist of :

- |  |            |
|--|------------|
| (i) Secretary to the Government of India in the concerned Ministry/Department                              | —Chairman; |
| (ii) Additional Secretary/Joint Secretary in charge of Administration in the concerned Ministry/Department | —Member;   |
| (iii) Any other Additional Secretary/Joint Secretary in the concerned Ministry/Department                  | —Member;   |

*Note.*—The Committee may, if considered necessary, co-opt an officer of the Department of Personnel and Training with the approval of Secretary (Personnel). Ministry of Personnel, Public Grievances and Pensions.

1. Added by Notification No. G.S.R. 130, dated 13th July, 1998.



(b) A Review Committee constituted by the State Government shall consist—

- |   |                    |
|---|--------------------|
| (i) Chief Secretary   | —Chairman;         |
| (ii) Seniormost Additional Chief Secretary/Chairman, Board of Revenue/ Financial Commissioner or an officer of equivalent rank and status | —Member;           |
| (iii) Secretary, Department of Personnel in the State Government  | —Member-Secretary; |

*Note.*—(i) The Home Secretary/Director General (Police) of the concerned States may be co-opted wherever a case concerning a member of the Indian Police Service is considered.

(ii) The Secretary Forest/Principal Chief Conservator of Forest of the concerned State may be co-opted wherever a case of concerning a member of the Indian Forest Service is considered by the Committee.

(iii) In States where Civil Services Board have been constituted, the State Government may entrust the work of the Review Committee to the Board.

2. *Functions.*—(a) A Review Committee/Civil Services Board shall review the cases officers under suspension in order to determine whether they are of sufficient grounds continuation of suspension.

(b) In every case the review shall be done within 90 days from the date of order of the pension. In a case where the period of suspension has been extended, the next review be done within a period of 180 days from the date of last extension.

3. *Procedure.*—(a) A Review Committee/Civil Services Board while assessing the notification for further continuance of any suspension, shall look into the progress of any enquiry/investigation against the officer by obtaining relevant information from the authorities inquiring/investigating into the charges.

(b) The Review Committee/Civil Services Board while examining a case shall consider the possibility of the officer under suspension tampering with the evidence, the process of inquiry or investigation and deprivation of his services during pension.

(c) The Review Committee/Civil Services Board shall submit a detailed report to the competent authority, clearly stating its recommendations and the reasons for arriving at recommendations relating to the continuance of suspension.

### STANDARD FORMS

[See Rule 3(9)]

*Note.*—1. The order should be signed by the competent authority himself.

2. Where an order has to be made in the name of the President of India/Governor of a State, the phrase 'By order and in the name of the President/Governor of State of....' should be inserted above the signatures. Such an order/communication should be signed by an officer in the appropriate Ministry/Department who is authorised under the constitution to authenticate the orders on behalf of the President of India/Governor of a State.



3. The form should not be used mechanically. Wherever necessary, suitable modifications should be made in the form to meet the requirements of a particular case.

### FORM I

#### *Standard Form for Order of Suspension Order*

Whereas a disciplinary proceedings against Shri.....(name and designation) contemplated/pending.

Whereas a case against Shri.....(name and designation) in respect of a criminal offence is under investigation/inquiry/trial.

Now, therefore, the.....(Authority competent to place under suspension), in exercise of powers conferred by Clause (a) of sub-rule (1) of Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969, hereby places the said Shri.....under suspension with immediate effect.

It is further ordered that during the period that this order shall remain in force, the Headquarters of Shri.....(name of place).....and the said Shri.....shall not leave the said headquarters without obtaining the permission of the undersigned.

Signature.....

Name and Designation of the suspending authority

No.....

Dated.....

Copy to Shri.....(name and designation). Order regarding allowance admissible to him during the period of his suspension will issue separately.

*Note.*—Copies should be endorsed to the Pay and Accounts Officer who authorises the drawal of his salary; to the Cash and Accounts Section of the Department; to the Establishment Section for making an entry in the Service Book; to the Appointing Authority, if the order is made by some other authority; and to the Lending Authority in the case of borrowed officer. The reasons for suspension should be communicated to the Appointing Authority, and the Lending Authority, separately, through confidential letters.

### FORM II

#### *Standard Form for Order of deemed Suspension Order*

Whereas a case against Shri.....(name and designation of the member of the service) in respect of a criminal offence is under investigation/ inquiry /trial;

And whereas, the said Shri.....was detailed in custody on.....for period exceeding forty-eight hours;

Now, therefore, the said Shri.....is deemed to have been placed under suspension by an order of the Appointing Authority w.e.f. ....in terms of sub-rule.....of Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969, until further orders.

Signature.....

Name and designation of the Appointing Authority



Copy to Shri.....(name and designation). Order regarding subsistence allowance admissible to him during the period of his suspension will issue separately.

*Note.*—Copies should be endorsed to the Pay and Accounts Officer who authorises the drawal of his salary; to the Cash and Accounts Section of the Department; to the Establishment Section for making an entry in the Service Book; to the Appointing Authority, if the order is made by some other authority; and to the Lending Authority in the case of borrowed officer. The reasons for suspension should be communicated to the Appointing Authority and the Lending Authority, separately, through confidential letters.

### FORM III

#### *Standard Form for Revocation of Order of Suspension Order*

Whereas an order placing Shri.....(name and designation), under suspension, was made/was deemed to have been made by.....on.....;

Now, therefore, the President/undersigned, in exercise of the powers conferred by Rule.....(here mention the relevant rule) hereby revokes the said order of suspension, with immediate effect.

Signature.....

Name and designation of the authority  
competent to revoke the order of suspension.

No.....

Dated.....

### <sup>1</sup>ANNEXURE

*Particulars relating to the disciplinary case referred to the Union Public Service Commission with Letter No. ....dated .....*

1. Name of accused officer and the  
Service to which he belongs

12. (i) Whether confirmed in the Service

(ii) To be used in case of members of All India Services

(iii) Date of such confirmation

3. Post held—

(a) Designation

(b) Scale of Pay

(c) Pay Drawn

(d) Date from which Pay shown  
against (c) drawn

4. Date of next increment

5. Date of Birth

6. Date of joining Government Service

1. To be used in case of members of All India Services.



- 
7. Date when due to retire or date of actual retirement in case of persons who have already retired
- 
8. (a)(i) Amount of monthly pension admissible  
 (ii) Amount of monthly pension sanctioned  
 (b)(i) Amount of gratuity admissible  
 (ii) Amount of gratuity sanctioned  
 (This information is required only in respect of cases of recovery from or withholding of pension/Special additional pension).
- 
9. (a) Appointing authority  
 (b) Punishing authority  
 (c) Appellate authority
- 
10. Whether an oral enquiry, if required, under the rules has been held
- 
11. Name and designation of the Enquiry officer, appointed, if any
- 
12. Whether all the relevant documents, in original particularly the following have been enclosed with the letter seeking the Commission's advice/letter forwarding the case to the Central Government in the case of certain major penalties, appeals, and memorials.
- (A) In the case of original enquiries :
- (i) Papers relating to preliminary enquiry, if any. In case the preliminary enquiry was done S.P.E. their report together with all the depositions recorded by them.
  - (ii) Suspension order, if any—
    - (a) Order revoking suspension, if any.
  - (iii) Order of the Competent Authority for joint/common proceedings, where issued, if two or more Government servants are involved in the case.
  - (iv) Charge-sheet with the statement of imputations of misconduct or misbehaviour and other enclosures.
  - (v) Reply of the accused officer to the charge-sheet.
  - (vi) Order appointing the Inquiry Officer.
  - (vii) Order appointing the Presenting Officer.
  - (viii) Record of the oral inquiry—
    - (a) Daily order sheet.
    - (b) Correspondence file of the Inquiry Officer.



- (c) Depositions.
- (d) Questions put the accused officer by the I.O..
- (e) Statement of defence before the Inquiry Officer.
- (f) Written briefs of :
  - (i) the Presenting Officer.
  - (ii) the Charged Officer.
- (g) Inquiry Officer's report.
- (ix) Miscellaneous documents regarding evidence such as exhibits, statements *etc.*, referred to in items (i) to (viii) above.
- <sup>1</sup>(x) Sanction of the Central Government for institution of departmental proceedings where necessary.
- <sup>1</sup>(xi) Show-cause notice for withdrawing/withholding the person.
- <sup>1</sup>(xii) Reply of the accused officer to the show-cause notice.

(B) In the case of appeals :

In addition to the documents specified under (A) above the following—

- (i) Order of the punishing authority.
- (ii) Appeal, if any, of the accused officer.
- (iii) Comments on the appeal as required under Rule 18(4) of A.I.S. (Discipline and Appeal) Rules, 1969.

(C) In the case of Memorials : or *suo moto* Review :

In addition to the documents specified under (A) and (B) above, the following :

- (i) Orders, if any, on the appeal.
- (ii) Memorial if any, from the accused officer.
- (iii) Note indicating the reasons for modifying the existing order of penalty and precise extent of such modification.
- 13. Miscellaneous documents such as extracts of relevant Rules, Codes, Acts, Judgments, Manuals *etc.*, referred to in the charge- sheet, statement of allegations, statement of defence Inquiring Authority's Report, reply to show-cause notice appeal, State Government's comments.
- 14. In cases where no enquiry has been held and factual and procedural points have been raised in the officers explanation :  
A note explaining such points.

---

1. This information is required in case of pensioners only.



15. Whether comments on procedural points, if any raise by the officer in his explanation to the charge-sheet/reply to show cause notice/appeal have been given.
16. Whether complete and upto date confidential roll of the officer has been enclosed.

---

Signature .....

Name in Block letters of officer of the State Government signing the statement .....

Designation .....

Dated .....

Telephone Number .....

---

*Copy of DP & AR Letter No. 11018/2/76-AIS (III), dated 30th June, 1975*

A copy of the Ministry of Home Affairs, D.O. Letter No. 24/25/62-AVD, dated 26.5.1962 along with extracts from some judgments of High Courts which were circulated among Vigilance officers to apprise them of the established law on the question of "standard of proof" in departmental enquiries against Government servants is enclosed. The same issue came up for consideration before the Supreme Court in the case of *Union of India v. Sardar Bahadur*, (1972) 4 SCC 618 : 1972 SLR 355. A copy of the judgment of the Supreme Court in this case also enclosed.

It is requested that the State Governments may kindly keep in mind the observations of the Supreme Court in this case, especially the observations of the Court reproduced below, while dealing with disciplinary cases against the members of the All India Services :—

- (i) "A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt."
- (ii) "A finding cannot be characterised as perverse or unsupported by any relevant materials if it is a reasonable inference from proved facts". This observation has been made in the context of the facts as stated in para 14 of the judgment.
- (iii) Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held that question of adequacy or reliability of the evidence cannot be canvassed before the High Court.
- (iv) "Now it is settled by the decision of this Court in *State of Orissa v. Vidyabhushan Mahapatra*, that if the order of punishing authority can be supported on any finding as to substantial misdemeanour



for which the punishment can be imposed, it is not for the Court to consider whether the charge proved alone would have weighed with the authority in imposing the punishment. The Court is not concerned to decide whether the punishment imposed, provided it is justified by the rules, is appropriate having regard to the misdemeanour established."

*Copy of D.O. No. 24/75/62-AND, dated 26.6.1962*

You may perhaps be aware of the decisions of certain courts in which it has been held that officer holding inquiries in departmental proceedings are not under any obligation to follow strictly the rules of evidence as laid down in the Evidence Act or the procedure prescribed in the Criminal Procedure Code. In this connection, I forward herewith relevant extracts from the judgments of the Courts for your information.

I shall be greatfull, if you would kindly bring these decisions to the notice of all authorities dealing with disciplinary cases, at the principle of these decisions, if followed, should enable the competent authority to deal with disciplinary cases more expeditiously.

\* \* \*

*All Vigilance Officers.*

### DEPARTMENTAL PROCEEDINGS

#### **Their Extracts from judgments of High Courts A.I.R. 1958 Punjab 27**

It has been agreed on behalf of the petitioner that an Inquiry Officer performs in the course of inquiry quasi-judicial functions and the proceedings held by him are in the nature of criminal or at least quasi-criminal proceedings, and, therefore, he must comply, at least in substance, with the provisions of Section 173(4) of the Criminal Procedure Code.

It is, therefore, necessary to determine the nature of the inquiry held under the Punjab Civil Services (Punishment and Appeal) Rules, 1952. It is stated before me that the charges which the petitioner has been called upon to meet are in substance the same as will be covered by Section 5(2) of the Prevention of Corruption Act and Sections 161 and 109 of the Indian Penal Code, and I shall decide this case on this assumption.

(2) Rule 7(2) lays down the procedure which should be observed in the course of an inquiry.

(3) .....The Punjab Civil Services Rules are only statutory rules regulating terms of service between the Government and its employees. The identical Rules called the Civil Services (Classification, Control and Appeal) Rules and also the provisions of the Public Servants (Inquiries) Act, 1850, were discussed by their Lordships of the Supreme Court in *S.A. Venkataraman v. Union of India*, AIR 1954 SC 373 (A).

Their Lordship held that the purpose of such an inquiry is merely to held the Government to come a definite conclusion regarding the conduct of a Government servant and to decide what penalty, if any should be imposed upon him. There is no other purpose which is served by this inquiry. The Inquiry Officer is appointed merely to find facts and it is clear from the Rules



that it is not the Inquiry Officer's concern whether the facts established disclosed the commission of a criminal offence punishable under the Indian Penal Code or any other law, or they disclose liability to imposition of penalties like censure or reduction in rank, or dismissal.

He merely send his report to the proper authority who may or may not accept his conclusions on facts found by him on the evidence produced before him. In these circumstances it is impossible to hold that proceedings before the Inquiry Officer are of criminal or quasi-criminal nature. Obviously such proceedings cannot be said to be criminal proceedings governed by the terms and provisions of the Criminal Procedure Code. The Inquiry Officer is not a Court within the Criminal Procedure Code, nor is the Government servant accused of any offence, nor is he liable to be sentenced for the commission of an offence under any penal law.

These proceedings cannot be said to be of quasi-criminal nature because the ultimate effect of these proceedings at the most is dismissal of the Government servant from service and the imposition of this penalty cannot be held to be of criminal nature. There is no provision in these rules which makes it incumbent on the Inquiry Officer to hold enquiry in accordance with the procedure laid down in the Criminal Procedure Code or to observe the provisions of Section 173(4) of that Code.

In this view of the matter it cannot possibly be held that the Inquiry Officer is bound to see that the provisions of Section 173(4) are observed before he proceeds to record evidence in the inquiry. If an Inquiry Officer refuses to comply with the provisions of Section 173(4), then it cannot be held that it is liable to be set aside by this Court in the exercise of jurisdiction conferred upon it under Article 226 of the Constitution.

*AIR 1958 Allahabad 532*

As a broad proposition of law that in a disciplinary enquiry the rules of procedure for a Court need not be observed and the rules of evidence need not be strictly followed cannot be disputed but all the facts of the case will have to be examined. The breach of the rules of evidence which may be nothing but rules of natural justice may be relevant in connection with the question as to whether sufficient opportunity was or was not given to a petitioner in a particular case to show-cause against the charges.

*AIR 1958 Calcutta 470*

(4) It is true that so far as departmental proceedings are concerned, they are not governed by the Indian Evidence Act, in other words the strict provisions laid down in the Indian Evidence Act are not applicable to departmental proceedings. Nevertheless, the proceedings are subject to rules of natural justice. The question, therefore, is as to what principle of natural justice is involved in such a case. The rules of natural justice are not codified and cannot be stated with exactitude. In departmental proceeding, it is unnecessary to import the strict procedure applicable to judicial trials, but where the departmental enquiry consists of the trial, which the punishing authority either by himself or through his delegate has a statutory duty to hear the delinquent or his witnesses, the



procedure adopted is to a certain extent like a judicial trial and it is an open question as to whether such proceedings are purely administrative or are to be considered as quasi-judicial. Be that as it may, if the enquiring authority has the duty to come to a conclusion as to the guilt of the delinquent upon an evaluation or assessment of the evidence then it is entirely necessary that he should be the person who should hear the evidence of the witnesses. It is impossible to evaluate the evidence of a witness taken on proxy because one of the salient features in such a proceeding is to observe the demeanour of the witness. As it has been said, even the devil doth not know the mind of man, and, therefore, to arrive at the truth it is necessary not only to read the evidence but to see the demeanour of the person giving evidence, and where necessary to elicit answer to doubtful points. To any one conversant with such trials, it is but an elementary proposition that the demeanour of a witness is the most important element in assessing the value of his evidence. The evidence of a witness, which might sound all right on paper, may be rendered useless by observing his demeanour.

*Copy of Letter No. 11017/1/76-AIS (III), dated 5.2.1976*

The provisions contained in Rule 20 of the All India Services (Conduct) Rules, 1968, are of special importance in the context of the latest endeavour to reduce the consumption of alcoholic beverages and drugs. While it is expected that every member of All India Services will scrupulously adhere to the provisions of the All India Services (Conduct) Rules, 1968, mentioned above, it is also expected of the disciplinary authorities to keep a strict watch on the conduct of members of the All India Services in regard to matters covered by the aforesaid Rules. Violation of any of the provisions of Rule 20 of the All India Services (Conduct) Rules, 1968, will constitute a good and sufficient reason for taking disciplinary action against a member of the All India Service. While any of the penalties specified in Rule 6 of the All India Services (Discipline and Appeal) Rules, 1969 can be imposed on a member of an All India Service for good and sufficient reasons after following the prescribed procedure, the disciplinary authorities should take a very serious view of any violation of Rule 20 of the All India Services (Conduct) Rules, 1968, and should not hesitate to impose the severest punishment on such members of the All India Service who are proved guilty of violating the said Rule.

I am to request that the contents of this letter may be brought to the notice of all members of the All India Services working under the State Government.

*Copy of Letter No. 11018/3/77-AIS (III), dated 29.4.1977*

The instructions contained in this Department's Office Memorandum No. 28022/1/75-Estt. (A), dated the 20th January, 1977, are extended to the retired members of the All India Services.

*Copy of DP & AR Letter No. 28022/1/75-Estt. (A), dated 20.1.1977*

1. A question has been raised whether, and if so, under what circumstances, Government should provide legal and financial assistance to a retired Government servant for the conduct of legal proceedings instituted against him by a private party in respect of matters connected with his official duties or position before his retirement. This has been considered by Government and it has been decided that the provisions contained in



paragraph 2(c) of the Ministry of Home Affairs No. 45/5/53-Estt. (A), dated 8th January, 1959. (Copy enclosed) should be extended also to retired Government servants. Accordingly, the provisions contained in the aforesaid paragraph, with the exception of the provision regarding grant of advance from Provident Fund, will apply also to Government servants who have retired from service, other than those who have been compulsorily retired from service as a measure of punishment. Further, the amount of interest free advance that may be granted to a retired Government servant will be subject to a maximum limit of Rs. 500.

2. The form of declaration to be obtained from a retired Government servant when the Government undertakes his defence and the form of Bond to be obtained from him, if advance is granted to cover legal expenses are enclosed as Annexure 'A' and 'B' to this Office Memorandum.

3. The provisions regarding consultation with Union Public Service Commission and the authority competent to take decision in each case will be the same as those contained in Ministry of Home Affairs Officer Memorandum dated 8th January, 1959.

*Copy of MHA O.M. No. 45/5/53-Estt. (A), dated 8.1.1959*

The question has been raised whether, and if so, under what circumstances, Government should provide legal and financial assistance to a Government servant for the conduct of legal proceedings by or against him. The following decisions, which have been taken in consultation with the Ministries of Law and Finance and the Comptroller and Auditor General are circulated for information and guidance.

(a) *Proceedings initiated by Government in respect of matters connected with official duties or position of the Government servant.*—Government will not give any assistance to a Government servant for his defence in any proceedings, civil or criminal instituted against him by the State in respect of matters arising out of or connected with his official duties or his official position. Should, however the proceedings concluded in favour of the Government servant, Government will entertain his claim for reimbursement of costs incurred by him for his defence, and if Government are satisfied from the facts and circumstances of the case that the Government servant was subjected to the strain of the proceedings without proper justification they will consider whether the whole or any reasonable proportion of the expenses incurred by the Government servant for his defence should be reimbursed to him.

(b) *Proceedings in respect of matters not connected with official duties or position of the Government servant.*—Government will not give any assistance to a Government servant or reimburse the expenditure incurred by him in the conduct of proceedings in respect of matters not arising out of, or connected with, his official duties or his official position, irrespective of whether the proceedings were instituted by a private party against the Government servant or *vice versa*.

(c) *Proceedings instituted by a private party against a Government servant in respect of matters connected with his official duties or position.*—(i) If the Government on consideration of the facts and circumstances of the case consider that it will be in the public interest that Government should themselves undertake the



defence of the Government servant agrees to such a course, the Government servant should be required to make a statement in writing as in Annexure A and thereafter Government should make agreements for the conduct of the proceedings as if the proceedings had been instituted against Government.

(ii) If the Government servant proposes to conduct his defence in such proceedings himself, the question of reimbursement of reasonable costs incurred by him for his defence may be considered in case the proceedings concluded in his favour. In determining the amount or costs to be so reimbursed, Government will consider how far the Court had vindicated the acts of the Government servant. The conclusion of the proceedings in favour of the Government servant will not by itself justify reimbursement.

To enable the Government servant to meet the expenses of his defence, Government may sanction, at their discretion, an interest free advance not exceeding Rs. 500 or the Government servant's substantive pay for three months, whichever is greater, after obtaining from the Government servant a bond in the form reproduced as Annexure B. The amount advanced would be subject to adjustment against the amount, if any, to be reimbursed as above.

The Government servant may also be granted any advance from any Provident Fund to which he is a subscriber not exceeding three months' pay or one half of the balance standing to his credit, whichever is less, this advance will be repayable in accordance with the rules of the fund.

(d) *Proceedings instituted by a Government servant of his being required by Government to vindicate his official conduct.*—A Government servant may be required to vindicate his conduct in a Court of Law in certain circumstances, (*vide* Ministry of Home Affairs O.M. No. F. 25/32/54-Estt. (A), dated 8th January, 1959). The question whether costs incurred by the Government servant in such cases should be reimbursed by the Government and if so, to what extent should be left over for consideration in the light of the result of the proceedings. Government may, however, sanction an interest-free advance, in suitable instalments, of any amount to be determined by them in each case on the execution of a bond by the Government servant in the form reproduced in Annexure B.

In determining the amount of costs to be reimbursed on the conclusion of the proceedings, the Government will consider to what extent the Court has vindicated acts of the Government servant in the proceedings. Conclusion of the proceedings in favour of the Government servant will not by itself reimbursement.

(e) *Proceedings instituted by a Government servant suo motu, with the previous sanction of Government to vindicate his conduct arising out of or connected with his official duties or position.*—If a Government servant resorts to a Court of Law with the previous sanction of Government to vindicate his conduct arising out of or connected with his official duties or position, though not required to do so by Government, he will not ordinarily be entitled to any assistance but Government may, in deserving cases sanction advances in the manner indicated in sub-para c(ii) above, but no part of the expenses incurred by the Government servant will be reimbursed to him even if he succeeds in the proceedings.



4. Clause (d) of Article 320(3) of the Constitution requires consultation with the Union Public Service Commission on any claim by a Government servant for the reimbursement of the costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty. In other cases consultation with the Union Public Service Commission is not obligatory, but it will be open to Government to seek the Commission's advice, if considered necessary.

5. The question whether a case falls under Article 320(3)(d) of the Constitution so as to require consultation with the Commission may at times be difficult to determine. It may be stated generally that the consultation is obligatory in a case where a reasonable connection exists between the act of the Government servant and the discharge of his official duties, the act must bear such relation to the official duties that the Government servant could lay a reasonable but not a pretended or a fanciful claim that he did it in the course of the performance of his duties.

6. The appropriate authority for taking decision in each case will be the administrative Ministry of the Government of India concerned who will consult the Finance and Law Ministries, where necessary. The Comptroller and Auditor General of India will exercise the powers of an administrative Ministry in respect of the personnel of the Indian Audit and Accounts Department.

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

### ANNEXURE A

*(Here enter description of the proceedings)*

The Government of India having been pleased to undertake my defence in the above proceedings. I hereby agree to render such assistance to Government as may be required for my defence and further agree that I shall not hold Government in any way responsible if the proceedings end in a decision adverse to me.

Dated .....

Signature of the retired Government servant

.....

### ANNEXURE B

By this bond I .....<sup>1</sup> ..... a retired Government servant at present residing at ..... having taken an advance of Rs. .... (Rupees ..... only) from the President of India (hereinafter called the "Government") promise and undertake to refund and pay to the Government the said sum of Rs. .... in .....<sup>2</sup> ..... equal monthly

1. Here give the name and other particulars of retired Government servant including the post held by him before retirement.
2. Here mention the number of instalment.



instalment of Rs. ....payable by the 10th of every months commencing from<sup>1</sup> .....

2. And I agree that in case I fail to pay any of the above-mentioned instalment on due date, the entire balance of the amount then remaining due shall at once become due and payable by me to the Government and, if I fail to pay the same within six months from the date on which the balance of the amount thus becomes due for payment, the Government shall have the right to recover the same from me by due process of law.

Dated this .....day of .....19.....

Signature of the retired Government servant

Witnesses to signature

Accepted

1. ....

<sup>2</sup>(Signature)

2. ....

(Designation)

for and on behalf of the President of India

*Copy of DP & AR Letter No. 11018/12/78-AIS (III), dated 14th August, 1978*

In pursuance of the provision contained in clause (b) of sub-rule (9) of Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969, the President hereby prescribes the following conditions subject to which a member of the Service may take the assistance of retired Government servant to present the case on his behalf :—

- (i) No retired Government servant can take up more than three cases at a time. At the time of appearance before the Inquiry Officer the retired Government servant should certify that he has only three cases on hand at the time.
- (ii) A retired Government servant cannot assist a member of an All India Service in disciplinary proceedings after the expiry of three years from the date of his retirement. The retired Government servant should produce before the Inquiry Officer, a declaration regarding his date of retirement.
- (iii) If the retired Government servant is also legal practitioner, the restrictions on engaging a legal practitioner by a delinquent Government servant to present the case on his behalf as contained in Rule 8(9) of the All India Services (Discipline and Appeal) Rules, 1969, would apply.
- (iv) In the matter of payment of travelling and other expenses to the retired Government servant assisting a member of the Service in disciplinary proceedings, the instructions contained in the Ministry of Home Affairs Office Memorandum No. 16/ 122/56-AVD, dated

1. Here mention the date of commencement of the first instalment.

2. Here mention the designation of the officer who is authorised to execute the bond under Article 299(1) of the Constitution.



18th August, 1960 will apply. The retired Government servant concerned will be deemed to belong to the grade of Government servants to which he belonged immediately before his retirement, for the purpose of these instructions. The expenditure on account of travelling and other expenses will be born by the State Government/Department to which the delinquent Government servant belongs.

*Explanation.*—Any person, who has retired from service under the Central Government, or the Government of a State or a Union Territory may be engaged by the member of the service to assist him in the disciplinary proceedings.

2. The decision contained in this letter may be brought to the notice of all concerned.

*Copy of DP & AR No. 11018/7/78-AIS (III), dated 16.8.1978 .*

1. Time limits for completing certain stages of inquiry into charges against members of the All India Services are laid down in sub-rules (8) and (12) of Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969. However, experience has shown that very often disciplinary proceedings are inordinately delayed. It is felt that if the guidelines laid down below are followed, it will ensure expeditious disposal of disciplinary cases.

2. Sub-rule (8) of Rule 8 provides that a member of the service shall be required to appear in person before the inquiring Authority at any time prescribed after the expiry of 10 working days from the date of the receipt of the charge-sheet. It would, therefore, be justified if the charged officer is given not more than 10 days for submitting his written statement of defence in reply to the charge-sheet under sub-rule (5) of Rule 8 *ibid*.

2.1. The statement of defence under Rule 8(5) All India Services (Discipline and Appeal) Rules, 1969 is expected to be limited simply to admitting or denying the charges communicated to the officer, and for such admission or denial inspection of documents is not necessary. Therefore, a request for inspection of documents at this stage made by the delinquent officer may not be accepted and it may be explained to the officer that he would get full opportunity to inspect the listed documents during the course of inquiry as per Rule 8(12) All India Services (Discipline and Appeal) Rules, 1969.

2.2. Although the time limit, as such, has been stipulated for the submission of the report by the Inquiry Officer after completing of the oral inquiry, ordinarily it should be possible for an Inquiry Officer to submit the inquiry report within a period of one month from the conclusion of the inquiry proceedings.

2.3. If these time limits and principles are assiduously observed, the period from the date of serving a charge-sheet in a disciplinary case to the submission of the report by the Inquiry Officer should ordinarily not exceed six months.

3. After submission of the Inquiry Report by the Inquiry officer, where the State Government comes to the conclusion that a major penalty may be imposed on an officer, they may issue a show-cause notice to the officer, or remit the case to the Central Government under Rule 8(22)(a) All India Services (Discipline and Appeal) Rules, 1969. As the case may be, within one to one and



a half months from the receipt of one inquiry report. In cases where the State Government consider that a minor penalty would be enough, a reference to the U.P.S.C. may also be made for their advice, within one to one and a half months of the receipt of the inquiry report.

4. While processing disciplinary cases against members of the All India Services, the guidelines mentioned above may be kept in view for completion of inquiries promptly. The State Government may also consider the desirability of issuing suitable instructions and that where a case is delayed at a particular stage beyond the time-limit stipulated for that stage, it be reported to the next higher authority with a statement of reasons for the delay.

*Letter No. 11018/19/78-(III), dated 15th January, 1979*

**Subject.**—All India Services (Discipline and Appeal) Rules, 1969—  
Procedure to be followed under Rule 8(20) thereof.

I am directed to forward herewith a copy of this Department's Office Memorandum No. 11012/18/77-Ests. (A), dated 2nd September, 1978 and to state that Rule 14(19) of the C.C.S. (C.C. & A.) Rules, 1965 corresponds to sub-rule (20) of Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969.

2. The clarification contained therein may please be brought to the notice of all concerned. With regard to its application in respect of sub-rule (20) of Rule 8 of the AIS (D & A) Rules, 1969.

*Office Memorandum No. 11012/8/77-Ests. (A),  
dated 2nd September, 1978*

**Subject.**—CCS (CCA) Rules, 1975—Procedure to be followed under  
Rule 14(19) thereof.

1. The undersigned is directed to say that according to Rule 14(19) of the CCS (CCA) Rules, 1965 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 cases, if they so desire. With reference to this rule, a question has been raised whether the written brief filed by the Presenting Officer should be made available to the accused Government Servant before he files his own written brief. The matter has been examined in consultation with the Ministry of law and the position is explained in the succeeding paragraph.

2. It will be seen from the phraseology of Rule 14(19) that the inquiring authority has to hear arguments that may be advanced by the parties after their evidence has been closed. But he can, on his own or on the desire of the parties, take written briefs. In case he exercises the discretion of taking written briefs, it will be but fair that he should first take the brief from the Presenting Officer, supply a copy of the same to the Government servant and then take the reply brief from the Government servant. In case the copy of the brief of the Presenting Officer is not given to the Government Servant, it will be like hearing arguments of the Presenting Officer at the back of the Government servant. In this connection, attention is also invited to the judgment of the Calcutta High Court in the case of *Collector of Customs v. Mohd. Habibul*, SLR 1973 (1) Cal 321, in which it is laid down that the requirement of Rule 11(19) of the CCS (CCA)



Rules, 1965 and the principles of natural justice demand that the delinquent officer should be served with a copy of the written brief filed by the Presenting Officer before he is called upon to file his written brief.

3. Ministry of Finance *etc.*, are requested to bring the above clarification to the notice of all concerned authorities under their control.

*Copy of DP & AR, letter No. 11018/18/81-AIS (III),  
dated 25th November, 1981*

1. A question has been under consideration of this department whether Rule 8(6)(a) of the All India Services (Discipline and Appeal) Rules, 1969, which is analogous to Rule 14(5)(a) of the Central Civil Services (CCA) Rules, 1965, permits the dropping of charges by the disciplinary authority after considering the written statement of defence submitted by the accused member of an All India Service under the aforesaid rules. The question has been considered in consultation with the Ministry of Law and the position in respect of AIS (Discipline and Appeal) Rules, 1969 is clarified as under :—

- (a) The disciplinary authority has the inherent power to review and modify 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 member of an All India Service under Rule 8(6) of the AIS (Discipline and Appeal) Rules, 1969.
- (b) The discipline authority is not bound to appoint an Enquiry Officer for conducting an enquiry into the charges which are not admitted by the accused member of the Service 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 the powers to drop the charges after the consideration of the written statement of defence by the accused member of the Service will be subject to the following conditions:

- (a) In cases arising out of the investigation 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 member of the Service. 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/State Vigilance Commission/Anti-Corruption Deptt. as the case may be, should be consulted where the disciplinary proceedings were initiated on the advice of any of these bodies and the intention is to drop the proceedings altogether, as distinct from dropping or reviewing or modifying some charges.
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