LAW OF DISCIPLINARY PROCEEDINGS

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1. **Laws governing the disciplinary proceedings :** Laws governing the disciplinary proceedings are as under :

(i) Articles 309, 310, 311 of the Constitution of India
(ii) Rules providing for the conditions of service of the delinquent employee
(iii) The Public Servants (Inquiries) Act, 1850
(iv) The Uttar Pradesh Government Servants Conduct Rules, 1956
(v) The Uttar Pradesh Government Servants (Discipline & Appeal) Rules, 1999
(vi) Section 4 of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witnesses & Production of Documents) Act, 1976
(vii) Orders XVI & XVI-A of the Code of Civil Procedure, 1908
(viii) Uttar Pradesh Class II Services (Imposition of Minor Punishment) Rules, 1973
(ix) U.P. Temporary Government Servants (Termination of Service) Rules, 1975
(x) Rules 53 & 54 etc. of the Financial Hand Book, Volume II, Parts II to IV
(xi) Certain Provisions like Rules 16 etc. of the U.P. General Clauses Act, 1904
(xii) Rule 27 etc of the Central General Clauses Act, 1897
(xiii) The Uttar Pradesh State Public Service Commission (Regulation of Procedure) Act, 1985
(xiv) Regulation 351-A of Civil Services Regulations
(xv) Judicial Pronouncements
(xvi) Principles of Natural Justice
(xvii) Govt. Notifications & G.Os. etc
(xviii) Departmental Circulars

2(A-1)."Misconduct" & its meaning : In the case of **Institute of Chartered Financial Analysts of India & others Vs. Council of Institute of Chartered Accountants of India & others, AIR 2007 SC 2091,** the Hon'ble Supreme Court has defined the expression "misconduct" thus : *"misconduct" inter alia, envisages breach of discipline, all though it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means "improper behaviour, intentional wrong doing on deliberate violation of a rule of standard or*

behaviour". Misconduct is a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand, it is a violation of definite law or a forbidden act. It differs from carelessness. Misconduct, even if it is an offence under the Indian Penal Code, is equally misconduct. Acquisition of additional qualification (degree) would not amount to misconduct or professional misconduct."

2(A-2). <u>Misconduct like drunkenness, fighting, indecent or disorderly behaviour at the work place or in the vicinity of the work place can be punished but not beyond such work place</u> : See : **Ms. Glaxo Laboratories (i) Ltd. Vs. Presiding Officer, AIR 1984 SC 505 (Five-Judge Bench)** *(paras 13 & 14)*

2(B)."<u>Misconduct" & its definition</u> : Interpreting the word "misconduct", the Hon'ble Supreme Court in the case of **State of Punjab & others Vs. Ram Singh, Ex-Constable, AIR 1992 SC 2188 (Three-Judge Bench)** and the Hon'ble Allahabad High Court in **Rinku alias Hakku Vs. State of UP, 2000(2) AWC 1446 (Allahabad High Court : Full Bench)** have observed thus : "*the word `misconduct' though not capable of precise definition, its reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, willful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty, the act complained of bears forbidden quality or character. It's ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve."*

2(C). "<u>Integrity" & its meaning</u> : As regards the meaning of the word "integrity", the Hon'ble Supreme Court in the case of **Vijay Singh Vs. State of UP & others, (2012) 5 SCC 242** has defined the said word thus : ***"integrity means soundness of moral principle or character, fidelity, honesty, free from every biasing or corrupting influence or motive and a character of uncorrupted virtue. It is synonymous with probity, purity, uprightness, rectitude, sinlessness and sincerity."***

3(A). <u>Nature of Departmental proceedings 'quasi-judicial'</u> : Holding departmental proceedings and recoding finding of guilt against any delinquent and imposing punishment for same is a quasi-judicial function and not administrative function.

Hence, authorities have to strictly adhere to statutory rules while imposing punishment. See…..

(i) **Vijay Singh Vs. State of Uttar Pradesh & others (2012) 5 SCC 242**

(ii) **State of UP and Coal India Ltd. Vs. Ananta Saha, (2011) 5 SCC 142**

(iii) **Mohd. Yunus Khan Vs. State of UP, (2010) 10 SCC 539**

(iv) Union of India & Others Vs. Mohd. Ramzan Khan, (1991) 1 SCC 588 (Three-Judge Bench).

3(B). <u>Nature of departmental enquiry when quasi-criminal/quasi-judicial in nature</u> ? : Disciplinary proceedings, however, being *quasi-criminal in nature,* there should be some evidence to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial i.e. *beyond all reasonable doubts*, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. See ..

(i) Nirmala J. Jhala Vs. State of Gujarat & Another, AIR 2013 SC 1513 *(paras 10 , 11, 12 & 13).*

(ii) M.V. Bijlani Vs. Union of India, (2006) 5 SCC 88 *(Para 25)*

3(C). <u>Departmental enquiry & criminal proceedings distinguished</u> : Scope of disciplinary proceedings and scope of criminal proceedings are quite distinct, exclusive and independent of each other. Standards of proof in the two proceedings are also different. See : **T.N.C.S. Corpn. Ltd. vs. K. Meerabai, (2006) 2 SCC 255**

3(D). <u>Standard of proof in a departmental enquiry which is quasi-criminal/quasi-judicial in nature</u> : Disciplinary proceedings, however, being *quasi-criminal in nature,* there should be some evidence to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial i.e. *beyond all reasonable doubts*, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant

facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. See ..

(i) **Nirmala J. Jhala Vs. State of Gujarat & Another, AIR 2013 SC 1513** *(paras 10 , 11, 12 & 13).*

(ii) **M.V. Bijlani Vs. Union of India, (2006) 5 SCC 88** *(Para 25)*

3(E). <u>Difference between disciplinary & criminal proceedings</u> : In the cases noted below, it has been repeatedly ruled by the Hon'ble Supreme Court and also by the Hon'ble Allahabad High Court that if the same set of facts gives rise to both civil and criminal liability, both the proceedings i.e. civil and criminal may go on simultaneously....

(i) **Medchi Chemicals and Pharma (P) Ltd. vs. Biological E. Ltd., 2000 (2) JIC 13 (SC)**

(ii) **Lalmani Devi vs. State of Bihar, 2001 (1) JIC 717 (SC)**

(iii) **Amar Pal Singh vs. State of U.P., 2002 (1) JIC 798 (All)**

(iv) **Atique Ahmad vs. State of U.P., 2002 (2) JIC 844 (All)**

(v) **Ajeet Singh vs. State of U.P., 2006 (6) ALJ 110 (All-F.B.)**

3(F). <u>Difference between disciplinary & criminal proceedings</u> : In the cases of (i) NOIDA Entrepreneurs Association Vs NOIDA & others, AIR 2007 SC 1161 (i4i) State Bank of India Vs. R.B. Sharma, (2004) 7 SCC 27 (iii) Kendriya Vidyalaya Sangathan Vs. T. Srinivas, (2004) 7 SCC 442 (iv) Depot Manager, APSRTC Vs. Mohd. Yousuf Miya, (1997) 2 SCC 699 (v) Captain M. Paul Anthony Vs. Bharat Gold Mines Limited (1999) 3 SCC 679 and (vi) State of Rajasthan Vs. B.K. Meena, (1996) 6 SCC 417 (vi) Pratap Singh Vs. State of Punjab, AIR 1964 SC 72 (vii) Jang Bahadur Singh Vs. Baij Nath, AIR 1969 SC 30, it has been laid down by the Hon'ble Supreme Court that "the purpose of departmental enquiry and of prosecution are two different and distinct aspects. Departmental Enquiry is to maintain discipline in the service and efficiency of public service. Crime is an act of commission in violation of law or of omission of public duty. The enquiry in a departmental proceeding relates to the conduct or breach of duty by the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. It is the settled legal position that the strict standard of proof or applicability of the Evidence Act stands excluded in a departmental proceeding. Criminal Proceedings and the departmental proceeding under enquiry can go on simultaneously."

3(G). <u>Difference between disciplinary & criminal proceedings</u> : In the case of **T.N.C.S. Corporation Ltd. Vs. K. Meerabai, (2006) 2 SCC 255,** it has been ruled by the Hon'ble Supreme Court that the scopes of the disciplinary proceedings and of criminal proceedings are quite distinct, exclusive and

independent of each other. Standards of proof in the two proceedings are also different.

3(H). <u>Difference between disciplinary & criminal proceedings</u> : In the cases of **Mohd. Saleem Siddiqui Vs. State of UP & others, (2011) 2 UPLBEC 1575 (Allahabad High Court) and Ajeet Kumar Naag Vs. General Manager Indian Oil Corporation Ltd. Haldia, JT 2005 (8) SC 425,** the distinction between departmental enquiry and criminal proceedings has been drawn as under.....

"The two proceedings that is criminal and departmental are entirely different. They operate in different fields and have different objectives. The object of criminal proceedings is to inflict appropriate punishment on offender and the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance service rules the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of accused beyond reasonable doubts, he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of preponderance of probability. Procedure with respect to standard of proof in criminal case and departmental enquiry are different. In the case of departmental enquiry the technical rules of evidence have no application and the doctrine of "proof beyond doubt" has also no application in the departmental enquiry. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. There would be no bar to proceed simultaneously with departmental enquiry and trial of criminal case. "

3(I-1).<u>Acquittal in criminal case not to have any impact on disciplinary proceedings in the absence of any service Rules</u> : Mere acquittal of an employee by a criminal Court has no impact on the disciplinary proceeding initiated by the Department. There may be cases where the service rules provide in spite of domestic enquiry, if the criminal Court acquits an employee honorably, he could be reinstated. The issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Acquittal of delinquent even if honorable as such does not in

absence of any provision in service rules for reinstatement, confer right on delinquent to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal Court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal Court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. See : **Deputy Inspector General of Police and Anothers Vs. S. Samuthiram, AIR 2013 SC 14** *(paras 20, 23 & 24).*

3(I-1).<u>Departmental proceeding can go on despite acquittal</u> : Departmental proceeding can proceed even though person is acquitted when the acquittal is other than honorable because very often criminal cases end in acquittal for want of proof beyond reasonable doubt. See : **SBI Vs. R. Periyasamy, (2015) 3 SCC 101**

3(J-1).<u>Disciplinary proceedings to be dropped on acquittal in criminal proceedings</u> : The effect of acquittal in criminal proceedings is that the disciplinary proceedings pending against the delinquent would be dropped. See…

(i) Sulekh Chandra Vs. Commissioner of Police, 1994 Suppl. (3) SCC 674.

(ii) M. Paul Anthony Vs. Bharat Gold Mines Ltd., 1999 JT 456 (SC)

3(J-2). <u>On acquittal in appeal, dismissed employee can be reinstated</u> : Taking proceedings for and passing orders of dismissal, removal or reduction in rank of a Government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said Government servant-accused has been released on bail pending the appeal. It cannot be said that until the appeal against the conviction is disposed of, action under clause (a) of the second proviso to Article 311(2) of the Constitution is not permissible. The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2) once a Government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the Government servant-accused **is acquitted** on appeal or other proceeding, the order can always be revised and if the **Government servant is reinstated**, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The

other course suggested, viz., to wait till the appeal, revision and other remedies are over would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court. The action under clause (a) of the second proviso to Article 311(2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311(2). See : **Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, AIR 1995 SC 1364**.

3(J-3). <u>On conviction, show cause notice to the convicted employee necessary before his dismissal</u> : On conviction, show cause notice to the convicted employee necessary before his dismissal**.** See : **Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, AIR 1995 SC 1364**.

3(K). <u>Disciplinary proceedings not to be dropped on acquittal of the delinquent in criminal proceedings</u> : Disciplinary proceedings cannot be dropped on acquittal of the delinquent/accused in criminal proceedings. See…

(i). State of A.P. Vs. C. Murlidhar, (1997) 6 SCC 594

(ii) Nelson Motis Vs. Union of India, AIR 1992 SC 1981

3(L). <u>Sealed cover procedure on initiation of criminal proceedings when to be adopted in respect of promotion of the employee</u> ? : Sealed cover procedure, is to be adopted only after the charge sheet is issued to the employee--Sealed cover procedure is to be restored to be only after issue of charge memo and pendency of preliminary investigation prior to that stage will not be sufficient to enable the authority to adopt such procedure. The contention of the appellant that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge memo/charge sheet, it would not be in the interest of purity of administration to reward the employee with a promotion, implement etc., cannot be accepted which would result in injustice to the employees in many cases. If the allegations are serious and the authorities are keen in investigating them, ordinarily it would not take much time to collect the relevant evidence and finalize the charges. See : **Union of India Vs. K.V. Jankiraman, AIR 1991 SC 2010=(1991) 4 SCC 109.**

4(A). <u>Charge framed must not be vague</u> : A charge framed in a disciplinary enquiry must not be vague. Fact that the delinquent did not raise defence that charge was

vague does not save enquiry from being vitiated. See : **Anant R. Kulkarni Vs. Y.P. Education Society, AIR 2013 SC 2098** *(Para 10)*

4(B). **Who can frame charge? :** Rule 7(i) of the UP Government Servant (Discipline And Appeal) Rules, 1999 provide that the disciplinary authority may himself in inquire into the charges or appoint an authority subordinate to him as inquiry officer to inquire into the charges. Rule 7(ii) provides that the facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge-sheet. The charge-sheet shall be approved by the disciplinary authority:

4(C). **Who can frame Charge ?** : Generally speaking, it is not necessary that charge should be framed by the authority competent to award the proposed penalty or that the inquiry should be conducted by such authority. See…. **Inspector General of Police & another Vs. Thavasiappan, AIR 1996 SC 1318.**

4(D). **Supplying copy of document to the delinquent relied upon by the Enquiry Officer must :** Where reliance was placed by the Enquiry Officer on the previous statement of the witness without supplying a copy thereof to the delinquent and without affording an opportunity to cross examine the witness, it has been held by the Hon'ble Supreme Court that reasonable opportunity contemplated by Article 311(2) of the Constitution means hearing in accordance with principles of natural justice. Ascribing the non-production of the witnesses, which was fault of the department, to the delinquent showed that the Enquiry Officer was biased in favour of the department and found the delinquent guilty in so arbitrary manner which showed that he was carrying out the command of some superior officer. See... **Kuldeep Singh Vs. Commissioner of Police & others, (1999) 2 SCC 10.**

4(E). **Document not mentioned in the charge-sheet not to be relied on :** A document which was not mentioned in the charge-sheet could not be relied on or even referred to by the disciplinary authority. More so, when the document (a voucher in this case) mentioned the date of payment in question different from that mentioned in the chart. See... **Kuldeep Singh Vs. Commissioner of Police & others, (1999) 2 SCC 10.**

4(F). **Admission of charge by delinquent & its effect**--- In the absence of any procedural illegality or irregularity in conduct of departmental enquiry any procedural lapse would be immaterial where the delinquent himself has admitted the charges and the conclusions arrived at by the enquiry officer also prove the charge. See--- **Chairman-cum-Managing Director, Coal India Ltd. Vs. Mukul Kumar Choudhuri, AIR 2010 SC 75.**

4(G). <u>Admission of guilt by delinquent despite opportunity to deny and its effect</u> : Where in domestic/departmental enquiry, the delinquent had unequivocally admitted the guilt despite opportunity to deny the charges at final stage before the Enquiry Officer and had also not denied the charges in preliminary hearing, it has been held by the Supreme Court that the delinquent cannot be permitted to resile from admission made by him before the Enquiry Officer. See : **Manoj H. Mishra Vs. Union of India, (2013) 6 SCC 313.**

5(A-1). <u>Observance of principles of natural justice mandatory</u>: When a departmental enquiry is conducted against a government servant, it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with the closed mind. The Enquiry Officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but it is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service. See : **State of UP & Others Vs. Saroj Kumar Sinha, AIR 2010 SC 3131.**

5(A-2).<u>Principles of natural justice must be realistically and pragmatically applied:</u> Principles of natural justice, though universal, must be realistically and pragmatically applied. See : **Manohar Lal Sharma Vs. Principal Secretary, (2014) 9 SCC 614 (Three-Judge Bench).**

5(B). <u>Observance of Principles of Natural Justice must even when Rules are silent</u> : Even where the rules require action without notice or opportunity of explanation and defence to the delinquent, the principles of natural justice must be read into the rules. See :

(i) **Maneka Gandhi Vs. Union of India, (1978) SCC 248 (Section 10 passports Act-rule of natural justice may be followed by giving post decisional opportunity) AIR 1978 SC 579(1), *(Seven-Judge Bench).***

(ii) **Vinay Kumar Tripathi Vs. State of UP 1995 Suppl (1) SCC 552 (Censure-Rule 55B of erstwhile CCA Rules; rule 6(2)(a) of the U.P. Subordinate Courts Staff (Punishment and Appeal Rules, 1976).**

5(C). <u>Issuing notice for hearing and to submit objections by the person likely to be affected by the order must</u> : In the case of **Suresh Chandra Nanhorya Vs. Rajendra Rajak, 2006 (65) ALR 323 (SC),** it has been ruled by the Hon'ble Supreme Court that *"non issue of notice to other side for hearing is grossly against the settled principles of natural justice. Right of a person to be heard in his defence is the most elementary protection and is the essence of fair adjudication. Even God did not pass sentence upon Adam before he was called*

upon to make his defence. Adam, says God "where art thou, has thou not eaten of the tree whereof I commanded thee that thou should not eat".

5(D-1A).<u>Providing hearing to delinquent before institution of enquiry not necessary</u> : Ordering institution of enquiry outright without providing opportunity of hearing to the delinquent on whether or not enquiry should be instituted is not necessary as it is not violative of any statutory or constitutional rights of the delinquent. See : **Madhukar Sadbha Shivarkar Vs. State of Maharashtra, (2015) 6 SCC 557.**

5(D-1).<u>Oral hearing not required once show cause notice or opportunity to reply is afforded</u> : Once the show cause notice is given and opportunity to reply to the show cause notice is afforded, it is not even necessary to give an oral hearing. See : **Gorkha Security Services Vs. Government (NCT of Delhi), (2014) 9 SCC 105.**

5(D-2).<u>Personal hearing when not required</u> : Relying upon the Supreme Court decision in **A.R. Antulay Vs. R.S. Naik, AIR 1988 SC 1531**, a Division Bench of the Hon'ble Allahabad High Court has held thus : *"The principles of natural justice cannot be stressed too far. It depends upon the facts and circumstances of the case as to whether the personal hearing was a must. This need not be permitted to be exploited as a purely technical weapon. The legislature appears to be conscious in not making provision for personal hearing under Section 20 of the Urban Land (Ceiling & Regulations) Act, 1976 ---- Opportunity of personal hearing is not necessary when opportunity of making comments or sending some more details have been afforded. That itself is sufficient for compliance of the principles of natural Justice.*" See : **Pyare Lal Tandon Vs. State of UP, AIR 1993 Allahabad 118 (DB).**

5(D-3). <u>Personal hearing when not required</u> : Where the party had not sought opportunity of personal hearing and was asked to submit its explanation which it had submitted in detail by including therein each and every relevant circumstance, it has been ruled by the Hon'ble Supreme Court that the party was not prejudiced by non-grant of opportunity of personal hearing. See : **Nirma Industries Limited Vs SEBI, (2013) 8 SCC 20**.

5(D-4). <u>Personal oral hearing when not required</u> : It has never been held either in this country or elsewhere that the rule of *audi alteram partem* takes within its sweep the right to make oral submissions in every case. It all depends upon the demands of justice in a given case. See : **Mohd. Arif Vs. Registrar, Supreme Court of India, (2014) 9 SCC 737 (Five-Judge Bench).**

5(E). **<u>Opportunity to the delinquent to make representation against the enquiry report before awarding penalty is mandatory</u> :** Dismissal--Irregularity--Entrance Examination--After the submission of enquiry report by the Sub-Committee and before the order of dismissal passed by Executive Council petitioner was not given any opportunity of hearing--Sub-Committee submitted its enquiry report on 27.06.2009 and recommended the dismissal of petitioner on the same day--Obviously, no opportunity was given to petitioner to make any explanation to against--Thus, the manner in which punishment has been inflicted is totally illegal--Inquiry Report as submitted by Sub-Committee is also vitiated and liable to be quashed--Impugned order quashed--Direction issued. See : **Vinay Kumar Pandey (Dr.) Vs. Chancellor, Deen Dayal Upadhyay Gorakhpur University, Gorakhpur 2013 (1) ESC 484 (All)(DB)(LB).**

5(F). **<u>Ex-parte enquiry when valid</u> ? :** If the delinquent does not participate or co-operate in enquiry, ex-parte enquiry would be valid. See : **Coal India Ltd. Vs. Ananta Saha, (2011) 5 SCC 142.**

6(A). **<u>Opportunity for cross-examination of witnesses by delinquent mandatory</u>** : Where a Manager in the United Commercial Bank (Chandigarh) was dismissed from service and during the departmental enquiry the presenting officer had submitted several exhibits, most of which were in the form of certificates, inspection-cum-investigation report prepared by two senior officers of the then division office and although they were examined by the Bank to prove those documents but opportunity to cross-examine those senior officers/witnesses was not given to the delinquent, it has been held that such omission amounted to denial of reasonable opportunity of defence. Natural justice says that reasonable opportunity to cross-examine such witnesses by the delinquent ought to have been granted. The enquiry was directed by the Supreme Court to be conducted afresh from the stage of enquiry report after opportunity of cross-examination of witnesses to the delinquent. See--- **S.C. Girotra vs. UCO Bank, 1995 Supp (3) SCC 212**

6(B). **<u>Denial of opportunity for cross-examination of complainant as witness by the delinquent & its effect</u>** : Where a police-sub-inspector was dismissed from service on the charges of in-efficiency and dis-honesty based on adverse reports of superior officers and such superior officers, though available, were not examined to enable the police-sub-inspector to cross-examine them, it has been held that refusal of the right of the delinquent to examine such witnesses amounted to denial of reasonable opportunity of showing cause against the action of dismissal and the dismissal was held as not legal. It has further been held that the reports against the delinquent police-sub-inspector relating to period earlier than the year in which he

was allowed to cross efficiency bar should not have been considered in the departmental enquiry. See--- **State of Punjab vs. Dewan Chunni Lal, AIR 1970 SC 2086**

6(C). **Denial of opportunity for cross-examination of complainant as witness by the delinquent & its effect** : Where a police-sub-inspector was dismissed from service on the charges of in-efficiency and dis-honesty based on adverse reports of superior officers and such superior officers, though available, were not examined to enable the police-sub-inspector to cross-examine them, it has been held that refusal of the right of the delinquent to examine such witnesses amounted to denial of reasonable opportunity of showing cause against the action of dismissal and the dismissal was held as not legal. It has further been held that the reports against the delinquent police-sub-inspector relating to period earlier than the year in which he was allowed to cross efficiency bar should not have been considered in the departmental enquiry. See--- **State of Punjab vs. Dewan Chunni Lal, AIR 1970 SC 2086**

6(D). **Evidence of witness recorded in preliminary enquiry not to be used in regular departmental enquiry unless cross examined by the delinquent :** The purpose behind holding preliminary enquiry is only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry. The evidence recorded in preliminary inquiry cannot be used in regular departmental in enquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice. See : **Nirmala J. Jhala Vs. State of Gujarat & Another, AIR 2013 SC 1513** *(paras 23 & 25).*

7. **Closure of defence evidence by delinquent when permissible ?** : Where the delinquent official had not attended the enquiry and had failed to adduce any evidence /witnesses despite several opportunities having been given for the same by the enquiry officer, it has been held that the delinquent cannot complain of not recording the evidence of his witnesses and other evidence and closer/conclusion of the departmental enquiry under such circumstances has been held proper. See---

1. **Secretary, Forest Department vs. Abdur Rasul Chowdhary, AIR 2009 SC 2925**
2. **Dy. Registrar, Co-operative Societies vs. Sachindra Nath Pandey, (1995) 3 SCC 134**

8(A). **Supply of enquiry report to delinquent must :** where there has been an Enquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the enquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the enquiry report would amount to Violation of rules of natural justice and make the final order liable to challenge hereafter. There

is, however, no question of furnishing copy of any report to the delinquent where the disciplinary authority is himself the Enquiry Officer as in such case there is no report and the disciplinary authority becomes the first assessing authority to consider the evidence directly for finding out whether the delinquent is guilty and liable to be punished. Even otherwise, the Enquire which are directly handled by the disciplinary authority and those which are allowed to be handled by the Enquiry Officer can easily be classified into to separate groups-one, where there is no enquiry report on account of the fact that the disciplinary authority is the Enquiry Officer and enquiries where there is a report on account of the fact that an Officer other than the disciplinary authority has been constituted as the Enquiry Officer. That itself would be a reasonable classification keeping away the application of Article 14 of the Constitution. See….

(i) **Union of India & Others Vs. Mohd. Ramzan Khan, (1991) 1 SCC 588 (three-Judge Bench).**

(ii) Managing Director, ECIL, Hyderabad & Others Vs. B. Karunakar & Others, (1993) 4 SCC 727 (Five-Judge Bench) (*decision in Mohd. Ramzan Khan's case affirmed***).**

8(B). <u>Failure of delinquent to ask for the enquiry report not to be construed as waiver</u> : Supplying copy of enquiry report to the delinquent is imperative. Failure of delinquent to ask for the enquiry report cannot be construed as waiver. See….**Managing Director, ECIL, Hyderabad & Others Vs. B. Karunakar & Others, (1993) 4 SCC 727 (Five-Judge Bench) (***decision in Mohd. Ramzan Khan's case affirmed***).**

8(C).<u>Non-supply of enquiry report to the delinquent when not to vitiate the enquiry</u> ? : If no prejudice is caused to the employee due to non-supply of copy of the enquiry report to him, it cannot be held that the enquiry had vitiated. The order of punishment should not be set aside mechanically on the ground that the copy of the enquiry report had not been supplied to the employee. See….

(i) Burdwan Central Co-operative Bank Limited & Another Vs. Asim Chatterjee & Others, (2012) 2 SCC 641*(paras 19 & 20)*

(ii) ECIL Vs. B. Karunakar, (1993) 4 SCC 727

9. <u>Duty of disciplinary authority when disagreeing with the enquiry report submitted by the Enquiry Officer</u> : Disciplinary authority is bound to record reasons for disagreeing with the findings of Enquiry Officer and to supply a copy thereof to the delinquent. Non furnishing of copy of recorded reasons for disagreement from the enquiry report prejudices the delinquent and hence

consequent order of punishment stands vitiated. See : **S.P. Malhotra Vs. Punjab National Bank, (2013) 7 SCC 251.**

10(A-1). <u>Authority empowered in law competent to impose penalty</u> : The power to impose penalty on a delinquent officer is conferred on the the competent authority either by an act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice is a matter of exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. **See... Apparel Export Promotion Council Vs. A.K. Chopra, AIR 1999 SC 625.**

10(A-2).<u>Authority higher than appointing authority can also initiate disciplinary proceedings and impose punishment</u> : It is permissible for an authority, higher than appointing authority to initiate the disciplinary proceeding and award punishment in case he is not the appellate authority so that the delinquent may not loose the right of appeal. In other case, the delinquent has to prove as what prejudice has been cause to him. See:

(i) **Secretary, Min. of Defence and Ors. Vs. Prabhash Chandra Mirdha, AIR 2012 SC 2250** *(para 5).*

(ii) **A. Sudhakar Vs. Postmaster-General, Hyderabad, (2006) 4 SCC 348.**

(iii) **Surjit Ghosh Vs. Chairman & Managing Director, United Commercial Bank, AIR 1995 SC 1053.**

(iv) **Balbir Chand Vs. FCI Ltd., AIR 1997 SC 2229.**

(v) **Sampuran Singh Vs. State of Punjab, AIR 1982 SC 1407.**

10(B).<u>Penalty not prescribed under statutory rules cannot be imposed</u> : In a civilized society governed by the rule of law, the punishment not prescribed under the statutory rules cannot be imposed. See : **Vijay Singh Vs. State of Uttar Pradesh & others (2012) 5 SCC 242**

10(C-1).<u>Proportionality of punishment in departmental enquiries</u> : Where the employee had submitted his resignation due to personal reasons but the same was not accepted by the employer company, the order of removal cannot be justified in such case as the award of penalty of removal from service is not proportionate to the misconduct of the employee in tendering his resignation. See--- **Chairman-cum-Managing Director, Coal India Ltd. Vs. Mukul Kumar Choudhuri, AIR 2010 SC 75.**

10(C-2).<u>Discretion to impose penalty must be exercised by the competent authority judiciously</u>: The discretion to impose penalty upon the delinquent

official must be impose by the competent authority in a judicious manner. See : **AIR 1963 SC 395.**

10(D). <u>Choice of punishment in the discretion of disciplinary authority</u> : It is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed on delinquent. This discretion has to be exercised objectively keeping in mind the nature and gravity of charge. The Disciplinary Authority is to decide a particular penalty specified in the relevant Rules. Host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, **past conduct**, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in department or establishment where he works, as well as extenuating circumstances, if any exist. See **: Deputy Commissioner, KVS & Others Vs. J. Hussain, AIR 2014 SC 766 <u>(DB)</u>** *(para 6)***.**

11(A).<u>Nature & necessity of preliminary enquiry</u>: The purpose behind holding preliminary enquiry is only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry. The evidence recorded in preliminary inquiry cannot be used in regular departmental in enquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice. See : **Nirmala J. Jhala Vs. State of Gujarat & Another, AIR 2013 SC 1513** *(paras 23 & 25).*

11(B).<u>Nature & necessity of preliminary enquiry</u> : A preliminary enquiry is only a fact finding enquiry for the satisfaction of the authority as to whether the allegations noticed against the employee concerned deserve any merit and as to whether a departmental enquiry be initiated against the employee or not. There is no requirement under any statutory provision or otherwise which requires opportunity of participation to delinquent employee in the preliminary enquiry. See : **Gopal Ji Rai Vs. State of UP, 2006 (63) ALR 616 (All)**

11(C).<u>No punishment can be awarded to a delinquent merely on the basis of preliminary enquiry</u> : Government servant cannot be punished on the findings of a preliminary enquiry without holding a disciplinary enquiry after serving a charge-sheet. See : **Cf. Amalendu Ghosh Vs. N.E. Rly. District Traffic Superintendent AIR 1960 SC 992.**

11(D).<u>Evidence recorded in preliminary enquiry not to be used in regular departmental enquiry</u> : The purpose behind holding preliminary enquiry is only to take a prima facie view, as to whether there can be some substance in the

allegation made against an employee which may warrant a regular enquiry. The evidence recorded in preliminary inquiry cannot be used in regular departmental in enquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice. See : **Nirmala J. Jhala Vs. State of Gujarat & Another, AIR 2013 SC 1513** ***(paras 23 & 25)***

12(A-1) **Mere order instituting enquiry not violative of statutory and constitutional rights** : Mere order instituting enquiry is not violative of statutory and constitutional rights of the delinquent and raising any such objections against the conduct of inquiry is pre-mature and misconceived. See : **Madhukar Sadbha Shivarkar Vs. State of Maharashtra, (2015) 6 SCC 557.**

12(A-2). **Employer not to be precluded from holding fresh enquiry after setting aside of penalty by court or authority** : Once the court set asides an order of punishment on the ground, that the enquiry was not properly conducted, the Court should not severely preclude the employer from holding the inquiry in accordance with law. It must remit the concerned case to the disciplinary authority, to conduct the enquiry from the point that it stood vitiated, and to conclude the same in accordance with law. However, resorting to such a course depends upon the gravity of delinquency involved. Thus, the court must examine the magnitude of misconduct alleged against the delinquent employee. It is in view of this, that court/tribunals, are not competent to quash the charge-sheet and related disciplinary proceedings, before the same are concluded on the aforementioned grounds. See : **Anant R. Kulkarni Vs. Y.P. Education Society, AIR 2013 SC 2098** *(para 7)*

12(B). **Providing fresh charge-sheet must for initiating fresh enquiry** : The question of initiating a fresh enquiry without giving a fresh charge-sheet cannot arise. When the High Court in the earlier writ had given liberty to hold de novo enquiry, meaning thereby that the entire earlier proceedings including the charge-sheet issued earlier stood squashed, it was not permissible for the appellants to proceed on the basis of the charge-sheet issued earlier. See : **Chairman-cum-Managing Director, Coal India Limited Vs. Ananta Saha, (2011) 5 SCC 142** ***(Para 28).***

13. **Quasi-Judicial order or act cannot be reviewed u/s 21 of the General Clauses Act, 1897**: Only purely administrative and/or legislative act to be reviewed under Section 21 of the **General Clauses Act, 1897** : Interpreting **Section 21 of the General Clauses Act, 1897**, in the case of **Indian National Congress (I) Vs. Institute of Social Welfare & others, (2002) 5 SCC 685**, it has been ruled by the Hon'ble Supreme Court that order which

can be modified or rescinded or varied or amended etc cannot be a quasi-judicial order but the same has to be either executive or legislative in nature. Section 21 (wrongly quoted as Section 31 by the applicants in their representation dated 21.05.2012) of the said Act thus applies to administrative orders and, therefore, the power of review of an earlier order granting or refusing sanction for prosecution is available to a competent authority. But as has been discussed in the preceding sub-paragraphs of para 4, there must be some fresh material necessitating review of earlier order of refusal or grant of sanction for prosecution**.**

14. **<u>High Court not to reappreciate evidence led before enquiry officer</u>**--- Where the findings recorded by the enquiry officer against the delinquent private secretary to a State Minister had proved the charge in departmental proceedings about misappropriation of government money but the High Court under Article 226 of the Constitution appreciated the evidence led before the enquiry officer to reach its own conclusion, it has been held by the Supreme Court that the High Court was not justified in re-appreciating the evidence led before the enquiry officer and the power of judicial review is confined to decision making process only. See--- **State of UP Vs. Man Mohan Nath Sinha, AIR 2010 SC 137**

15. **<u>Delay in concluding disciplinary proceedings & it's effect?</u>**--- The delay in concluding the domestic enquiry proceedings is not fatal to the proceedings. It depends on the facts and circumstances of each case. The un-explained protracted delay on the part of the employer may be one of the circumstances in not permitting the employer to continue with the disciplinary enquiry proceedings. At the same time, if the delay is explained satisfactorily then the proceedings should be permitted to continue. See--

(i) **Anant R. Kulkarni Vs. Y.P. Education Society, AIR 2013 SC 2098**

(ii) **Secretary, Forest Department vs. Abdur Rasul Chowdhary, AIR 2009 SC 2925**

(iii) **Dy. Registrar, Co-operative Societies vs. Sachindra Nath Pandey, (1995) 3 SCC 134**

(iv) **UP State Sugar Corporation Ltd. Vs. Kamal Swaroop Tondon, AIR 2008 SC 1235 (para 27)**

16(A-1).<u>Disciplinary Enquiry against retired employee depends upon his service condition</u> : Rules governing the service conditions of an employee are the determining factors as to whether and in what manner the domestic enquiry can be held against an employee who stood retired after reaching the age of superannuation, generally, if the enquiry has been initiated while the delinquent employee was in service, it would continue even after his retirement, but nature of punishment would change. The

punishment of dismissal/removal from service would not be imposed. See : **Anant R. Kulkarni Vs. Y.P. Education Society, AIR 2013 SC 2098** *(para 18)*

16(A-2).<u>Governor not the Minister of the department is competent to grant permission for initiation of departmental proceedings and award of penalty against a retired government servant</u> : We are of the considered opinion that the provisions of Article 309 of the Constitution of India operate in a separate field vis-a-vis the conduct of government business under Article 166 of the Constitution of India. They are not overlapping. Therefore, if under the service rules framed under Article 309 of the Constitution of India namely the Civil Services Regulations, 1975 it has been provided that sanction of the Governor would be necessary before initiation of the departmental proceedings with the service of the charge sheet upon the retired employee then such sanction has to be that of the governor and not of the minister with reference to the U.P. Secretariat Instructions 1982 framed under the Rules of Business, 1975. We may also record that the U.P. Secretariat Instructions, 1982 Chapter VII only provide that all business allocated to a department under the Rules of Business, 1975 is to be disposed of by or under the General or special directions of the minister in charge (Reference Business Regulations 3). It is, therefore, clear that only such business as allocated to the department under the Rules of Business, 1975 can be disposed of under the general or special directions of the minister in charge. We have, therefore, no hesitation to hold that the sanction of the minister referable to the Business Regulations in the facts of the case will not amount to the sanction of the Governor as contemplated by Regulation 351-A of the Civil Services Regulations, 1975. See :

(i) **Govind Singh Sisodia Vs State of UP, (2015) 3 UPLBEC 2285 (All)** *(para 13)*

(ii) **Z.U. Ansari Vs State of UP, 2014 (3) ADJ 671 (All)(DB)** *(paras 10, 13, 15, 16 & 17)*

16(A-3).<u>Disciplinary Enquiry instituted during service can continue after retirement of the delinquent only when the service rules so provide</u> : Appellant who was working as Assistant Engineer with Respondent 2. A disciplinary proceeding was initiated under Regulation 85 of the Uttar Pradesh Co-operative Societies Employees' Service Regulations, 1975, against him by serving a charge-sheet and after inquiry he was dismissed from service by order dated 27.04.1988. The appellant sought for quashing the said order by filing a writ petition in Writ Petition No. 4328(S/B) of

1988 on the file of the High Court of Judicature of Allahabad and the High Court held that the inquiry was not conducted in accordance with the procedure stipulated in Regulation 85 since no opportunity was given to cross-examine the witness and there is violation of principles of natural justice and quashed the disciplinary proceeding by allowing the writ petition on 10.01.2006. The order also directed for reinstatement and payment of back wages in accordance with the rules. Liberty was also granted to conduct a fresh disciplinary inquiry in accordance with the Regulations. Pursuant to the order, the appellant joined duty on 26.04.2006. Fresh disciplinary proceeding was initiated by order dated 07.07.2006, appointing Shri G.S. Srivastava, Kukhya Abhiyanta as inquiry officer and it was pending. Meanwhile the appellant reached the age of superannuation and retired from the service as Assistant Engineer on 31.03.2009. ....The appellant challenged the continuance of disciplinary proceeding after his retirement by filing Writ Petition No. 1919(S/B) of 2009 on the file of the High Court of Judicature of Allahabad, Lucknow Bench. The High Court relying on the decision of this Court in U.P. Coop. Federation Ltd. V. L.P. Rai held that there is no ground to interfere with the disciplinary proceeding and directed to complete it within four months by the impugned order dated 18.12.2009. The appellant filed Review Petition No. 139 of 2010 and the High Court dismissed the same by order dated 29.03.2014. Challenging both the orders the appellant has preferred the present appeals. .....The learned counsel for the appellant contended that the disciplinary proceeding was not completed for more than three years and in the absence of any provision in the Regulations providing for continuation of disciplinary proceedings after retirement of the employee, the respondents could not continue the disciplinary proceeding against the appellant after his superannuation. It is his further contention that the High Court has failed to appreciate the law laid down by this Court in similar circumstances in the decision **Bhagirathi Jena Vs. Orissa State Financial Corpn**. (1999) 3 SCC 666= 1999 SCC (L & S) 804 and for the said reason the impugned order is liable to be set aside. An occasion came before this Court to consider the continuance of disciplinary inquiry in similar circumsance in Bhagirathi Jena case and it was laid down as follows : (SCC pp. 668-69, paras 5-7). ..... It will be noticed from the above said Regulations that no specific provision

was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of the departmental enquiry after superannuation. In view of the absence of such a provision in the above said Regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.06.1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement. ..... One the appellant had retired from service on 31.03.2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits. see : **Dev Prakash Tewari Vs. UP Co-operative Institutional Service Board, Lucknow, (2014) 7 SCC 260** *(paras 2, 3, 6 & 8)*

16(B). **<u>Departmental Enquiry to proceed even after the retirement of the Government Servant</u>**--- If the departmental enquiry was initiated against the government servant during his service and could not be completed before the retirement from service of the government servant on attaining age of superannuation; even thereafter such departmental enquiry may proceed for imposing punishment contemplated under rules. See---**Secretary, Forest Department vs. Abdur Rasul Chowdhary, AIR 2009 SC 2925**

16(C). **<u>No departmental proceedings can be instituted against a retired/pensioner government servant after four years</u> :** The Hon'ble Supreme Court has held that no departmental proceedings can be instituted against the pensioner if the event for which the proceedings are instituted is in respect of an event which may have taken place not more than four years before the institution of such proceedings. See….**State of UP Vs. Sri Krishna Pandey, AIR 1996 SC 1656.**

16(D). **<u>Departmental Enquiry instituted but not completed during service must be completed within six months after retirement</u>** : If a Departmental

Enquiry is instituted against a Government Servant but the same is not completed during the period of his service, it must be completed within six months after his retirement from service. No proceeding can be allowed to continue against the retired Govt. Servant after six months of his retirement from service. Regulation 351-A of the CSR is mandatory. Serial No. 17 of the "Time Scheduled" of the UP Pension (Submission, Disposal and Avoidance of Delay) Rules, 1995 is mandatory. See ….

(i) Dan Singh & Others Vs. Khaleel & Another, 2007 (5) ADJ 705 (All…DB)

(ii) Lakhan Lal Ahirwar Vs. State of UP & Others, 2007 (5) ADJ 701(All…DB)

16(E).<u>Penalty like withholding of pension of retired government servant under Regulation 351-A of Civil Services Regulations</u> : "Regulation 351-A : *The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to government by misconduct or negligence during his service including service rendered on re-employment after retirement.***"**

16(F).<u>Pension cannot be withheld in the absence of statutory provisions during pendency of departmental/criminal proceedings</u> : Pension of an employee is in the nature of "property" and cannot be taken away without due process of law. Even part of pension and/or gratuity cannot be withheld in absence of statutory provisions and under umbrage of administrative instructions during pendency of departmental/criminal proceedings. See : **State of Jharkhand Vs Jitendra Kumar Srivastava, AIR 2013 SC 3383.**

16(G).<u>Pension cannot be withheld in the absence of statutory provisions during pendency of departmental/criminal proceedings</u> : Pension of an employee is in the nature of "property" and cannot be taken away without due process of law. Even part of pension and/or gratuity cannot be withheld in absence of statutory provisions and under umbrage of administrative instructions during pendency of departmental/criminal proceedings. See : **State of Jharkhand Vs Jitendra Kumar Srivastava, AIR 2013 SC 3383.**

16(H) <u>Government can reduce, forfeit, withhold or recover pension:</u> It is open to government to reduce, forfeit, withhold or recover pension, after affording hearing to the affected person on ground of unsatisfactory service based on proved findings of serious misconduct or causing pecuniary loss to the Government. Such proceedings can be instituted even after retirement for

misconduct, negligence or financial irregularity. Where Government servant was found guilty of misconduct or negligence resulting in financial loss to the Government, it was competent to the Government to direct reduction in pension. See: (i) State of Uttar Pradesh Vs. Brahm Datt Sharma, (1987) 2 SCC 179 and (ii) UP State Sugar Corporation Ltd. Vs. Kamal Swaroop Tondon, AIR 2008 SC 1235 .

16(I). **Judicial review by Courts against Governor's sanction order for instituting departmental enquiry against retired employee is permissible :** Overruling its previous decision in State of M.P. Vs. Dr. Yashwant Trimbak, AIR 1996 SC 765, a Three-Judge Bench of the Supreme Court has ruled that the observations made by the Two Judge Bench in AIR 1996 SC 765 to the extent that the order of sanction granted by the Governor are outside the scope of the judicial review is unattainable in law. The same is contrary not only to the law laid down by the Supreme Court in AIR 1973 SC 1461 but also the provisions of Articles 77(2) and 166(2) of the Constitution of India. See : **Brajendra Singh Yambem Vs. Union of India, AIR 2016 SC 4107 (Three-Judge Bench)(para 40)**

17. **Proof of contents of documents produced against the charged officer must** : In the cases of **Roop Singh Negi Vs Punjab National Bank & Others, (2009) 2 SCC 570** *(paras 14, 15 & 23)* and **Naresh Singh Vs State of UP & Others, 2013 (1) ESC 429 (Allahabad)(DB)(LB)***(para 43)*, it has been ruled by the Hon'ble Supreme Court and also by the Hon'ble Allahabad High Court that in the departmental enquiry, mere production of documents is not enough. The contents of the documentary evidence has to be proved by examining witnesses. In the absence of examination of any such witness in support of the contents of the documents relied on by the enquiry officer in support of the charges leveled against the delinquent, the contents of the said documents as mentioned in the charges and the enquiry report dated 23.12.2006 cannot be said to have been proved as per the requirement of law and, therefore, the findings recorded by the enquiry officer against the delinquent on the basis of those documents are not sustainable.

18. **Compulsory retirement before one year of retirement**--- Where the delinquent was compulsorily retired from service before one year from the date of superannuation and the near about the same on the ground of lack of integrity and unfit to be retained in service, it has been held by the Supreme Court that the order of compulsory retirement is stigmatic and suffers from malice in law as well and the same was set aside. See--- **Swaran Singh Chand Vs. Punjab State Electricity Board, AIR 2010 SC 151**

19(A).<u>Use of uncommunicated adverse entries</u>: Uncommunicated adverse entries can be taken into account for the purpose of assessing an officer for compulsory retirement. Law requires the Authority to consider the entire service record of the employee while assessing whether he can be given compulsory retirement irrespective of the fact that the adverse had not been communicated to him and that he had been promoted inspite of those adverse entries. See--- **PyareMohan Lal vs. State of Jharkhand, 2010 (7) SCJ 1 at page 17**

19(B).<u>A single adverse entry relating to integrity sufficient for compulsory retirement</u> : A single adverse entry relating to integrity of an officer (judicial officer) even in remote past is sufficient to award compulsory retirement. See--- **PyareMohan Lal vs. State of Jharkhand, 2010 (7) SCJ 1 at page 17**

19(C).<u>Adverse entries continue to be relevant despite promotion</u>--- Uncommunicated adverse entries can be taken into account for the purpose of assessing an officer (judicial officer) for compulsory retirement. Law requires the Authority to consider the entire service record of the employee while assessing whether he can be given compulsory retirement irrespective of the fact that the adverse had not been communicated to him and that he had been promoted inspite of those adverse entries. See--- **Pyare Mohan Lal vs. State of Jharkhand, 2010 (7) SCJ 1 at page 17**

19(D).<u>Promotion during prosecution</u> : Promotion without reference to and without taking into consideration the criminal charges in prosecution or the pendency of the disciplinary enquiry, if the accused/delinquent employee is found fit for promotion, he should be promoted immediately subject to review after the conclusion of the enquiry. See :

(i) A.R. Antuley Vs. R.S. Nayak, (1992) 1 SCC 225 (Five-Judge Bench) (paras 11, 12 & 86).

(ii) State of Punjab Vs. Chaman Lal Goel, (1995) 2 SCC 570

(iii) Division Bench judgment dated 17.07.2014 of the Lucknow Bench of the Allahabad High Court in W.P. (S/B) No. 708/2013, Dr. Aruna Bharti Vs. State of UP & SGPGIMS, Lucknow.

(iv) judgment dated 14.02.1984 of the Hon'ble Allahabad High Court in Writ Petition No. 912/1984, Dr. K.M. Hamimun Nisa Vs. State of UP.

20. <u>Engaging lawyer in departmental enquiry</u> ... The normal rule is that the delinquent would be entitled to engage another officer/official to present his case. But if the presenting officer is a legal practitioner, he may normally be permitted to engage a legal practitioner. A judge may be law graduate holding a bachelor degree in law from any University established by law in India but this by itself

would not render him as a legal practitioner. Where in departmental proceedings against a judicial officer of subordinate judiciary an ADJ was appointed as presenting officer, the delinquent cannot claim to be represented through lawyer. See..... **Dinesh Chandra Pandey Vs. High Court of M.P, AIR 2010 SC 3055.**

21. **Previous adverse entry not to be considered in awarding penalty for misconduct...** While recommending or imposing punishment on an employee, who is found guilty of misconduct, the disciplinary/competent authority cannot consider his past adverse record or punishment without giving him an opportunity to explain his position and considering his explanation. However, such an opportunity is not required to be given if the final punishment is lesser than the proposed punishment. See... **Indu Bhushan Dwivedi Vs State of Jharkhand, 2010 SC 2472.**

22(A-1). Rules 16 of UP General Clauses Act, 1904 : "Power to appoint to include power to suspend, dismiss or otherwise terminate the tenure of office **:** *Where, by any Uttar Pradesh Act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have the power to suspend, dismiss, remove or otherwise terminate the tenure of office of any person appointed, whether by itself or any other authority, in exercise of that power."*

22(A-2).Dismissal without enquiry when possible ? : The essential ingredients as required by the second proviso (b) to Article 311(2) of the Constitution for dismissal without enquiry are as under :

(i) Conduct of delinquent employee should be such as would justify any one of the three punishments i.e. dismissal, removal or reduction in rank.

(ii) Competent authority should be satisfied that it is not possible to hold enquiry in terms of Articles 311 (2) of the Constitution

(iii) Competent authority must record reasons of the said satisfaction in writing. See **: Ved Mitter Gill Vs. Union Territory Administration, Chandigarh, (2015) 8 SCC 86.**

22(B).Dismissal or termination of employee only by appointing authority : Interpreting the word "appointing authority", it has been held by the Hon'ble Supreme Court that the word "appointing authority" means the authority

which appointed the government employee. It is settled law that the appointment of the government employee cannot be terminated by the authority other than the appointing authority. See :

(i) Om Prakash Gupta Swadheen Vs. State of UP, AIR 1975 SC 1265

(ii) Ramakant Gupta Vs. State of UP, 1988 LCD 411 (All-LB)(DB)

(iii) Jawahar Lal Vs. Project Officer, Intensive Sheep and Wool Development Project, Mirzapur, (2003) 3 UPLBEC 2276 (All.)

22(C-1).<u>Distinction between Dismissal and removal :</u> Removal unlike 'dismissal' may not under the Service Rules disqualify the person 'removed' from re-employment under Government. Further from the stand-point of the Service Rules there be a difference between 'removal' and 'dismissal' as to the extent of consequences that respectively flow therefrom. But for the purpose of Article 311(2) of the Constitution both stand on an equal footing as major penalties. Both entail penal consequences. See : **State of Assam Vs. Ashkya Kumar Deb. (1975) 2 SLR 430 (SC).**

22(C-2).<u>Dismissal disqualifies from future employment</u> : In the case of **Satish Chandra Anand Vs. Union of India, AIR 1953 SC 250 (Five-Judge Bench),** a **Constitution Bench** of the Hon'ble Supreme Court had ruled in the year 1953 that dismissal of a person from government service disqualifies him for future employment. The same view has also been taken by the Hon'ble Supreme Court in subsequent years as reported in the cases of **Dr. Dattatraya M. Nadkarni Vs. Municipal Corporation of Greater Bombay, AIR 1992 SC 786 & Union of India & others Vs. Gulam Mohd. Bhat, AIR 2005 SC 4289.**

22(C-3).<u>Distinction between 'removal from office' and 'dismissal from service'</u> : "Removal from office or service" is considered as a punishment under various service laws as well as under Article 311 of the constitution. Removal from service or office is considered as equivalent to dismissal from service but the latter is a harsher punishment. See :

(i) Mithilesh Singh Vs. Union of India & Others, AIR 2003 SC 1724 ***(para 1)***

(ii) Union of India & Others Vs. Gulam Mohd. Bhat, AIR 2005 SC 4289***(paras 1, 2 & 3)***

22(C-4)."<u>Relieving of duties" & its meaning</u> : "Relieving of duties" is a term used to refer to situations where the employee has been transferred from one place to another (and has been "relieved of his duties" at the prior place of posting). See :

(i) **Union of India & Others Vs. Sh. H.N. Kirtania, AIR 1989 SC 1774** *(para 3)*

(ii) State of Punjab Vs. Labhu Ram, AIR 1977 SC 98 *(para 4)*

22(C-5)."Relieving of duties" & its meaning : "Relieving of duties" also refers to acceptance of offer of resignation by the employee. See **: North Zone Cultural Centre & Another Vs. Vedpathi Dinesh Kumar, AIR 2003 SC 2719** (para 18).

22(C-6)."Relieving of duties" & its meaning : It may also be for temporary relieving of duties while the employee holds and maintains the substantive post. See **: Union of India & Others Vs. B. Dev, AIR 1998 SC 2709** *(para 2).*

22(C-7)."Relieving of duties" of a probationer may amount to termination of his services : The term "relieved of duties" may also refer to "termination of service" especially if the employee is on probation. See**: Krishnadevaraya Education Trust & Another Vs. L. A. Balakrishna, AIR 2001 SC 625** *(para 4).*

22(C-8)."Relieving of duties" on suspension : An employee is relieved of his duties while put under suspension. See **: R. Jeevaratnam Vs. State of Madras, AIR 1966 SC 951** *(para 1).*

22(C-9).Order of suspension takes effect from the date of communication and not from the date of actual receipt : Order of suspension takes effect from the date of communication and not from the date of actual receipt. See : **State of Punjab Vs. Khemi Ram, AIR 1970 SC 214.**

22(C-10). Suspension to be revoked if charge-sheet not severed within three months from the date of suspension order : In the judgement dated 16.02.2015 passed by the Hon'ble Supreme Court in Civil Appeal No. 1912/2015, Ajay Kumar Choudhary Vs Union of India, it has been ruled by the Hon'ble Supreme Court that if the charge sheet is not provided to the delinquent officer within a period of three months from the date of his suspension, then such suspension order cannot be allowed to remain in force any further and the delinquent officer deserves to be reinstated in service and his suspension order deserves to be revoked.

22(C-11). Charge-sheet not to be quashed in routine manner: A charge-sheet in disciplinary proceeding cannot be quashed in a routine manner. In case the delinquent employee has a grievance in respect of the charge-sheet, he must raise a issue by filing a representation and wait for the decision of the disciplinary authority. See:

(i) Secretary, Ministry of Defence Vs. Prabhash Chandra Mirdha, AIR 2012 SC 2250

(ii) Union of India Vs. Upendra Singh, (1994) 3 SCC 357

(iii) State of Orissa Vs. Sangram Keshari Misra, (2010) 13 SCC 311

22(D). Drinking liquor may lead to dismissal : The question whether the single act of heavy drinking of alcohol by an employee while on duty is a gravest misconduct

? It may be stated that taking to drink by itself may not be a misconduct but being on duty in the disciplined service like police service and having heavy drink, then seen roaming or wandering in the market with service revolver and even abusing the medical officer when sent for medical examination shows his depravity or delinquency due to his drinking habit. Thus it would constitute gravest misconduct warranting dismissal from service. See : **State of Punjab and others Vs. Ramsingh, Ex-constable, AIR 1992 SC 2188 (Three-Judge Bench).**

22(E).<u>Dismissal disqualifies from future employment</u> : In the case of **Satish Chandra Anand Vs. Union of India, AIR 1953 SC 250 (Five-Judge Bench),** a **Constitution Bench** of the Hon'ble Supreme Court had ruled in the year 1953 that dismissal of a person from government service disqualifies him for future employment. The same view has also been taken by the Hon'ble Supreme Court in subsequent years as reported in the cases of **Dr. Dattatraya M. Nadkarni Vs. Municipal Corporation of Greater Bombay, AIR 1992 SC 786 & Union of India & others Vs. Gulam Mohd. Bhat, AIR 2005 SC 4289.**

22(F). <u>A single misconduct sufficient for dismissal</u> : According to Section 13(2) of the UP General Clauses Act, 1904, words in the singular shall include the plural, and vice versa. Under the General Clauses Act singular includes plural, act includes acts. The contention is that there must be plurality of acts of misconduct to award dismissal fastidious. The words 'acts' would include singular act as well, it is not repetition of the acts complained of but it is quality insidious effect and gravity of situation that ensues from the offending 'act': **State of Punjab Vs. Ramsingh, Ex-Constable, AIR 1992 SC 2188. (Rinku alias Hukku Vs. State of UP., 2000 (2) AWC 1446 (FB).**

22(G). <u>Misconduct in previous employment can be considered in subsequent employment</u> : Disciplinary proceeding against an employee can be initiated by the parent department in regard to acts purportedly done by him in his previous employment. If the act or omission concerned reflects on the delinquent employee's reputation for integrity or devotion to duty as member of the service, then there is necessarily a link between his previous and subsequent employment and acts of delinquency/misconduct in the previous employment and on proof of such misconduct in previous service, the delinquent can be dismissed from service in his subsequent or parent employment. See…. **Burdwan Central Co-operative Bank Limited & Another Vs. Asim Chatterjee & Others, (2012) 2 SCC 641.**

22(H).<u>Termination of services of temporary/ad-hoc employee</u> : In the case of **State of UP & Another Vs. Km. Premlata Mishra & Others, AIR 1994 SC 2411**, where the services of a temporary Assistant Project Officer appointed under the National Adult Education Scheme in UP were terminated by the

competent authority on the ground of her irregular presence on duty by giving one month's pay to her without conducting an enquiry into the alleged misconduct, interpreting the provisions of the 'UP Temporary Government Servant's (Termination of Service) Rules, 1975', it has been ruled by the Hon'ble Supreme Court that : *"if misconduct is the foundation to pass the order then an enquiry into misconduct should be conducted and an action according to law should follow. But if it is not the motive, it is not incumbent upon the competent officer to have the enquiry conducted and the service of a temporary employee could be terminated in terms of the order of appointment or rules giving one month's notice or pay salary in lieu thereof. Even if an enquiry was initiated, it could be dropped midway and action could be taken in terms of the rules or order of appointment.*" In the case of **Smt. Rajinder Kaur Vs. Punjab State & Another, AIR 1986 SC 1790**, a lady constable was temporarily appointed and during probation period, she committed misconduct by staying in nights with a male constable and on her aforesaid misconduct, she was dismissed from service by the competent authority without a proper enquiry and then it has been held by the Hon'ble Supreme Court that "*the order of dismissal from service was bad in law in as much as no charge-sheet was supplied to her, no explanation was called from her, no opportunity to cross examine the witnesses examined was given to her, no opportunity to show cause against the proposed dismissal from service was given to her and all that was made in total contravention of the provisions of Article 311(2) of the Constitution and her dismissal order was set aside."* Similarly in the case of **Nar Singh Pal Vs. Union of India & Others, (2000) 3 SCC 588**, a casual labour of the Telecom Department had acquired the status of a temporary employee and his services were terminated for certain misconduct like assaulting and threatening the gateman without conducting a regular departmental enquiry as per law and then setting aside the termination order, the Hon'ble Supreme Court has held thus : *"Once an employee attains the temporary status, he becomes entitled to certain benefits one of which is that he becomes entitled to the constitutional protection envisaged by Article 311 of the Constitution and other Articles dealing with services under the Union of India. The services were terminated on account of the allegation of assault by the delinquent employee. The order of termination cannot be treated to be a simple order*

of retrenchment. it was an order passed by way of punishment and, therefore, was an order of dismissal which, having been passed on the basis of preliminary enquiry and without holding a regular departmental enquiry, cannot be sustained."

22(HH).<u>No termination of services of probationer/dismissal on stigmatic grounds without enquiry</u> : Where the services of Probationary Officers were terminated on the ground of using unfair means in test/examination, it has been held by the Supreme Court that since their services were terminated not on account of any deficiency in their performance during probation period or failure to secure qualifying marks in confirmation test but on the ground of their misconduct as to use of unfair means in the test and no enquiry was conducted and no opportunity of hearing was granted to them and they were condemned unheard despite stigmatic allegations as above, therefore, termination of their services was declared unsustainable. See : **State Bank of India Vs. Palak Modi, (2013) 3 SCC 607.**

22(I). <u>Rules 16 of UP General Clauses Act, 1904</u> : "Power to appoint to include power to suspend, dismiss or otherwise terminate the tenure of office : *Where, by any Uttar Pradesh Act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have the power to suspend, dismiss, remove or otherwise terminate the tenure of office of any person appointed, whether by itself or any other authority, in exercise of that power."*

22(J).<u>Dismissal or termination of employee only by appointing authority</u> : Interpreting the word "appointing authority", it has been held by the Hon'ble Supreme Court that the word "appointing authority" means the authority which appointed the government employee. It is settled law that the appointment of the government employee cannot be terminated by the authority other than the appointing authority. **See :**

(i) Om Prakash Gupta Swadheen Vs. State of UP, AIR 1975 SC 1265

(ii) Ramakant Gupta Vs. State of UP, 1988 LCD 411 (All-LB)(DB)

(iii) Jawahar Lal Vs. Project Officer, Intensive Sheep and Wool Development Project, Mirzapur, (2003) 3 UPLBEC 2276 (All.)

22(K).<u>Dismissal disqualifies from future employment</u> : In the case of **Satish Chandra Anand Vs. Union of India, AIR 1953 SC 250 (Five-Judge Bench),** a **Constitution Bench** of the Hon'ble Supreme Court had ruled in the year 1953 that dismissal of a person from government service disqualifies him for future

employment. The same view has also been taken by the Hon'ble Supreme Court in subsequent years as reported in the cases of **Dr. Dattatraya M. Nadkarni Vs. Municipal Corporation of Greater Bombay, AIR 1992 SC 786 & Union of India & others Vs. Gulam Mohd. Bhat, AIR 2005 SC 4289.**

22(L). **<u>Termination of services of temporary/ad-hoc employee</u>** : In the case of **State of UP & Another Vs. Km. Premlata Mishra & Others, AIR 1994 SC 2411**, where the services of a temporary Assistant Project Officer appointed under the National Adult Education Scheme in UP were terminated by the competent authority on the ground of her irregular presence on duty by giving one month's pay to her without conducting an enquiry into the alleged misconduct, interpreting the provisions of the 'UP Temporary Government Servant's (Termination of Service) Rules, 1975', it has been ruled by the Hon'ble Supreme Court that : *"if misconduct is the foundation to pass the order then an enquiry into misconduct should be conducted and an action according to law should follow. But if it is not the motive, it is not incumbent upon the competent officer to have the enquiry conducted and the service of a temporary employee could be terminated in terms of the order of appointment or rules giving one month's notice or pay salary in lieu thereof. Even if an enquiry was initiated, it could be dropped midway and action could be taken in terms of the rules or order of appointment.*" In the case of **Smt. Rajinder Kaur Vs. Punjab State & Another, AIR 1986 SC 1790**, a lady constable was temporarily appointed and during probation period, she committed misconduct by staying in nights with a male constable and on her aforesaid misconduct, she was dismissed from service by the competent authority without a proper enquiry and then it has been held by the Hon'ble Supreme Court that "*the order of dismissal from service was bad in law in as much as no charge-sheet was supplied to her, no explanation was called from her, no opportunity to cross examine the witnesses examined was given to her, no opportunity to show cause against the proposed dismissal from service was given to her and all that was made in total contravention of the provisions of Article 311(2) of the Constitution and her dismissal order was set aside."* Similarly in the case of **Nar Singh Pal Vs. Union of India & Others, (2000) 3 SCC 588**, a casual labour of the Telecom Department had acquired the status of a temporary employee and his services were terminated for certain misconduct like assaulting and threatening the gateman without conducting a regular departmental enquiry as per law and then setting aside the termination order, the Hon'ble Supreme Court has held thus : *"Once an employee attains the temporary status, he becomes entitled to certain benefits one of which is that he becomes entitled to the constitutional protection envisaged by Article 311 of the Constitution and other Articles dealing with services under the*

Union of India. The services were terminated on account of the allegation of assault by the delinquent employee. The order of termination cannot be treated to be a simple order of retrenchment. it was an order passed by way of punishment and, therefore, was an order of dismissal which, having been passed on the basis of preliminary enquiry and without holding a regular departmental enquiry, cannot be sustained."

23. **Power of appellate authority to appreciate evidence:** The disciplinary authority and on appeal the appellate authority, being fact finding authorities, have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of misconduct. See....**Apparel Export Promotion Council Vs. A.K. Chopra, AIR 1999 SC 625.**

24. **Right of representation by delinquent against enquiry report :** A delinquent has right to make his representation against the enquiry report of the Enquiry Officer submitted in departmental enquiries. See….

(i) **Union of India & Others Vs. Mohd. Ramzan Khan, (1991) 1 SCC 588 (Three-Judge Bench).**

(ii) Managing Director, ECIL, Hyderabad & Others Vs. B. Karunakar & Others, (1993) 4 SCC 727 (Five-Judge Bench)(*decision in Mohd. Ramzan Khan's case affirmed***)**

25. **A thing to be done in the manner prescribed or not at all :** In the cases reported in **(i) Dhananjaya Reddy Vs. State of Karnataka, (2001) 4 SCC 9 (para 23), (ii) Ram Chandra Keshav Adke Vs. Govind Joti Chavare, AIR 1975 SC 915 and (iii) State of UP Vs. Singhara Singh, AIR 1964 SC 358,** it has been repeatedly ruled by the Hon'ble Supreme Court that *"it is settled law that where law requires a thing to be done in a certain manner or where a power is given to do a certain thing in a certain manner, the thing must be done in that way or manner or not at all and other methods of performance are necessarily forbidden."*

26. **Equitable doctrines not to apply in the event of fraud etc :** It is settled law that in the event of fraud or deceits etc. being played by a person, all equitable doctrines cease to apply to the case of such fraudster as has been ruled by the Hon'ble Supreme Court. In the cases of **District Primary School Council, West Bengal Vs. Mritunjoy Das and others, 2011 (3) SLJ 239 & Ram Preeti Yadav Vs. UP Board of High School and Intermediate Education & others, (2003) 8 SCC 311,** the Hon'ble Supreme Court has ruled that *"no person should be allowed to keep an advantage which he has obtained by fraud. Fraud can disqualify a man from job".*

Similarly In the cases of **Ram Chandra Singh Vs. Savitri Devi, (2003) 8 SCC 319 & Rajinder Singh Vs. Delhi Transport Corporation & others, 2011 (3) SLJ 33(CAT....Principal Bench, New Delhi),** it has been ruled that *"an appointment obtained by fraud is non est. Fraud is anathema to all equitable principles and any affair tainted with fraud could not be perpetuated or saved by application of any equitable doctrine."* In the cases of **(i) State of AP Vs. T. Suryachandra Rao, 2005 (33) AIC 761 (SC), (ii) Bhavrao Dagdu Paralkar Vs. State of Maharashtra, 2005 (4) AWC 3460 (SC), (iii) N. Khosla Vs. Rajlakshmi, 2006 (63) ALR 534 (SC) & (iv) M/s Reliance Salt Ltd. Vs. M/s Cosmos Enterprises & others, 2007 (66) ALR 653 (SC),** it has been repeatedly laid down by the Hon'ble Supreme Court that fraud vitiates most solemn act.

27. **<u>Appointment procured on false Caste Certificate liable to be terminated</u> :** In the cases of **Ram Chandra Singh Vs. Savitri Devi, (2003) 8 SCC 319** and **Rajinder Singh Vs. Delhi Transport Corporation & others, 2011 (3) SLJ 33**(CAT....Principal Bench, New Delhi), where the appointee had secured his appointment on the basis of false Caste Certificate, which on verification by the Scrutiny Committee, was found to be false after 10 years of her joining the service and a long time was taken by the Scrutiny Committee to verify the same, it has been held by the Hon'ble Supreme Court that both the counts as above do not validate the Caste Certificate and the consequent illegal appointment because long service on a fraudulent appointment can be no defence. Similarly in the case of **Arshad Jamil Vs. State of Uttarakhand & others, 2011 (3) SLJ 367 (SC),** it has been ruled by the Hon'ble Supreme Court that an appointment based on wrong Caste Certificate can be terminated.

28. **<u>Enquiry Officer when to be held biased and proceeding under pressure from his superior officer</u> ?** Where reliance was placed by the Enquiry Officer on the previous statement of the witness without supplying a copy thereof to the delinquent and without affording an opportunity to cross examine the witness, it has been held by the Hon'ble Supreme Court that reasonable opportunity contemplated by Article 311(2) of the Constitution means hearing in accordance with principles of natural justice. Ascribing the non-production of the witnesses, which was fault of the department, to the delinquent showed that the Enquiry Officer was biased in favour of the department and found the delinquent guilty in so arbitrary manner which showed that he was carrying out the command of some superior officer. See...**Kuldeep Singh Vs. Commissioner of Police & others, (1999) 2 SCC 10.**

29. **<u>Code of Conduct for the teachers of Universities & their affiliated/associated Colleges</u> :** The Statutes of the State Universities provide for the Code of Conduct for their teachers and their affiliated/associated Colleges. Any

breach of the prescribed Code of Conduct is treated as "Misconduct" and the delinquent teacher can be punished with the penalty prescribed therefor in the Statutes.

30. **Closure of departmental proceeding when permissible ?**--- Where the delinquent official had not attended the enquiry and had failed to adduce any evidence /witnesses despite several opportunities having been given for the same by the enquiry officer, it has been held that the delinquent cannot complain of not recording the evidence of his witnesses and other evidence and closer/conclusion of the departmental enquiry under such circumstances has been held proper. See---

1. **Secretary, Forest Department vs. Abdur Rasul Chowdhary, AIR 2009 SC 2925**
2. **Dy. Registrar, Co-operative Societies vs. Sachindra Nath Pandey, (1995) 3 SCC 134**

31(A). Ordering suspension of government servant by the disciplinary authority in a routine manner disapproved by the Supreme Court : Disapproving the placing of government servants under suspension by their appointing authorities even when there is no such justifiable necessity, the Hon'ble Supreme Court has, in the case noted below, observed thus : *"Exercise of right to suspend an employee may be justified on the facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by a* ***"suspension syndrome"*** *and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension."* See : **M. Paul Anthony Vs Bharat Gold Mines Ltd and another (1999) 3 SCC 679**.

31(B). Subsistence allowance during suspension : The option of not receiving any work from the employee may be exercised by the employer by placing the employee under suspension making payment to the employee at the usual rate or subsistence allowance at a reduced rate if there exists any provision in the service rule or regulations or standing order applicable to the employee concern. See :

(i) **Ram Lakhan Vs. Presiding Officer & Others, (2001) 3 SCC 161**

(ii) **Hotel Imperial Vs. Hotel Workers Union, AIR 1959 SC 1342 (relied on in Ram Lakhan)**

31(C). Suspended employee continues in service and relationship of employer & employee also continues : Before furnishing the legal opinion on the twin queries mentioned above, it has to be noticed that FR 53 of the FHB, Volume II, Parts II to IV, provides for the law relating to subsistence allowance of a suspended or deemed suspended government servant. A **Constitution Bench** of the

Hon'ble Supreme Court in the case of **Khem Chand Vs Union of India, AIR 1963 SC 687** has ruled that : "*An order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service inspite of the order of suspension. The real effect of the order of the suspension is that though he continues to be a member of the government servant, he is not permitted to work and further during the period of his suspension he is paid only some allowance, generally called "subsistence allowance" which is normally less than his salary, instead of the pay and allowances he would have been entitled to if he had not been suspended.*" In the case of **Jagadamba Prasad Shukla Vs State of UP, (2000) 7 SCC 90**, the Hon'ble Supreme Court, while interpreting the provisions of FR 53 (2) of the Financial Hand Book, has declared that : *"the payment of subsistence allowance, in accordance with the Rules, to an employee under suspension is not a bounty. It is a right. An employee is entitled to be paid the subsistence allowance."* In the case of **Ram Lakhan Vs Presiding Officer, (2000) 10 SCC 201** (*para 16*), a Three-Judge Bench of the Hon'ble Supreme Court has held that : *"the very expression "subsistence allowance"* has an undeniable penal significance. The dictionary meaning of the word "*subsist"* as given in Shorter Oxford English Dictionary, Vol. II at page 2171 is "*to remain alive as on food, to continue to exist." 'Subsistence*' means--"*means of supporting life, especially a minimum livelihood*."

31(D). FR 53 (1)(b) of the FHB, Volume II, Parts II to IV, provides thus : *"Any other compensatory allowance admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension : Provided that the government servant shall not be entitled to the compensatory allowances unless the said authority is satisfied that the government servant continues to meet the expenditure for which they are granted.*"

31(E). At page 638 of his famous Text Book known as "सेवा विधि : Service Laws", the learned author Shri V.K. Singh, a Judge, while expressing his opinion on FR 53 of the FHB, has observed thus :

"नियम–53 के पूर्वोक्त उपबन्धों के अनुसार निलम्बित सेवक को जीवन निर्वाह भत्ता के रूप में निम्नलिखित धनराशि दी जाएगी :–

(1) उसके मूल वेतन की आधी धनराशि,

(2) उस पर अनुमन्य मंहगाई भत्ता,

(3) प्रतिकर भत्ता, जो अनुमन्य हो ।

निलम्बित सेवक जब यह प्रमाण–पत्र प्रस्तुत करेगा कि वह किसी अन्य सेवायोजन, व्यापार, वृत्ति या व्यवसाय में नहीं लगा है तभी जीवन निर्वाह भत्ता का भुगतान आरम्भ किया जायेगा ।

यदि सरकारी सेवक को मकान किराया भत्ता, नगर प्रतिकर भत्ता, वाहन–भत्ता, वर्दी भत्ता आदि प्राप्त हो रहा हो तो उसके निलम्बन के दौरान इस भत्तों की पूर्ण धनराशि उसे मिलेगी, किन्तु इन प्रतिकर भत्तों में से सिर्फ उन्हीं भत्तों को पाने का वह हकदार होगा जिसे वह व्यय कर रहा हो । चूँकि निलम्बन की अवधि में कार्यालय में उपस्थित होना अपेक्षित नहीं है अतः कार्यालय आने–जाने हेतु अनुमन्य वाहन भत्ता उसे अनुमन्य नहीं होगा । इसी कारणवश वर्दी–भत्ता भी अनुमन्य नहीं होगा ।''

31(F).<u>Subsistence & subsistance allowance</u> : Before furnishing the legal opinion on the twin queries made at page 148 of the file, it has to be noticed that the FR 53 of the FHB, Volume II to IV, provides for the law relating to subsistence allowance of a suspended or deemed suspended government servant. A **Constitution Bench** of the Hon'ble Supreme Court in the case of **Khem Chand Vs Union of India, AIR 1963 SC 687** has ruled that : "*An order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service inspite of the order of suspension. The real effect of the order of the suspension is that though he continues to be a member of the government servant, he is not permitted to work and further during the period of his suspension he is paid only some allowance, generally called "subsistence allowance" which is normally less than his salary, instead of the pay and allowances he would have been entitled to if he had not been suspended.*" In the case of **Jagadamba Prasad Shukla Vs State of UP, (2000) 7 SCC 90**, the Hon'ble Supreme Court, while interpreting the provisions of FR 53 (2) of the Financial Hand Book, has declared that : *"the payment of subsistence allowance, in accordance with the Rules, to an employee under suspension is not a bounty. It is a right. An employee is entitled to be paid the subsistence allowance."* In the case of **Ram Lakhan Vs Presiding Officer, (2000) 10 SCC 201** (*para 16*), a Three-Judge Bench of the Hon'ble Supreme Court has held that : *"the very expression "subsistence allowance"* has an undeniable penal significance. The dictionary meaning of the word "*subsist"* as given in Shorter Oxford English Dictionary, Vol. II at page 2171 is "*to remain alive as on food, to continue to exist." "Subsistence*" means--"*means of supporting life, especially a minimum livelihood*."

31(G).<u>Second suspension order during the pendency of first enquiry proceedings not to be ordered</u> : Second suspension order during the pendency of first enquiry proceedings cannot be ordered. See : **Dr. Surendra Nath Verma Vs. State of UP, 2014 (103) ALR 336 (All)(DB).**

31(H).<u>Second/fresh enquiry cannot be ordered merely because the first enquiry report was not acceptable to the disciplinary authority</u> : Normal rule is that there can be only one enquiry though possibility of further enquiry in certain circumstances is not entirely ruled out. But merely because the report submitted by the first Enquiry Officer was not acceptable to the disciplinary authority cannot be a ground for rejecting the enquiry report and ordering second enquiry particularly when the reason given by the disciplinary authority for ordering fresh enquiry are untenable. If the exoneration of the delinquent officer is justified then whether the enquiry report is cursory or elaborate should make no difference to the legality of the report. What matters is the correctness of the conclusions recorded and not the length or elegance of the language of the report. See : **Vijay Shankar Pandey Vs. Union of India, (2014) 10 SCC 589.**

31(I).<u>Change of Enquiry Officer during enquiry permissible</u> : Where during the pendency of the enquiry, the Enquiry Officer had taken voluntarily retirement, it has been held by the Hon'ble Supreme Court that changing Enquiry Officer is permissible. Non-recording of reasons while changing Enquiry Officer is also inconsequential in the absence of any prejudice being caused to the delinquent employee by such change. See : **State Bank of India Vs. Boa Penji, (2015) 1 SCC 661**.

32(A). <u>Disciplinary proceeding when deemed to commence or start</u> ? : There can be no quarrel with the settled legal proposition that the disciplinary proceedings commence only when a charge-sheet is issued to the delinquent employee. A departmental proceeding is ordinarily said to be initiated only when a charge-sheet is issued. See :

(i) Coal India Ltd. Vs. Ananta Saha, (2011) 5 SCC 142.

(ii) Union of India Vs. K.V. Jankiraman, (1991) 4 SCC 109

(iii) UCO Bank Vs. Rajinder Lal Capoor, (2007) 6 SCC 694

(iv) Union of India Vs. Anil Kumar Sarkar, (2013) 4 SCC 161 *(para 20)*

32(B). <u>Who can institute enquiry</u> ? : In the case reported in **Secretary, Min. of Defence Vs. Prabhash Chandra Mirdha, AIR 2012 SC 2250** *(para 4),* the Hon'ble Supreme Court has ruled thus : "*The legal proposition has been laid down by this court while interpreting Article 311 of the Constitution of India, 1950 that the removal and dismissal of a delinquent on misconduct must be by the authority not below the appointing authority. However, it does not mean that disciplinary proceedings may not be initiated against the delinquent by the authority lower than the appointing authority. It is permissible for an authority, higher/superior than the appointing authority to initiate the proceedings and impose the punishment in case he is not the*

appellate authority so that the delinquent may not lose the right of appeal. In other case, delinquent has to prove as what prejudice has been caused to him." In **Transport Commissioner Madars-5 Vs. A. Radha Krishna Moorthy, (1995) 1 SCC 332**, the Hon'ble Supreme Court has held thus : *"In so far as initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable. The initiation can be by an Officer subordinate to the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority.*" In the case of **Director General ESI Vs. T. Abdul Razak, AIR 1996 SC 2292** and **Steal Authority of India Vs. Dr. R.K. Diwakar AIR 1998 SC 2210**, it has been held by the Hon'ble Supreme Court that : *"The legal position is well settled that it is not necessary that the authority competent to impose the penalty must initiate the disciplinary proceedings and the proceeding can be initiated by any superior authority who can be held to be the controlling authority who may be an officer subordinate to the appointing authority.*"

32(C). <u>Who can order institution of disciplinary enquiry</u> ? : Normally the appointing authority can only order institution of disciplinary enquiry. But any other authority other than the appointing authority can also institute disciplinary enquiry but in view of the provisions of Article 311 of the Constitution such authority shall not be competent to award any penalty against the delinquent. See :

(i) **Jai Jai Ram v. U.P. State Road Transport Corporation, Lucknow AIR 1996 SC 2289 .**

(ii) **Secretary, Min. of Defence and Ors. v. Prabhash Chandra Mirdha, AIR 2012 SC 2250** *(para 4).*

32(D). <u>Authority higher than appointing authority can also initiate disciplinary proceedings and impose punishment</u> : It is permissible for an authority, higher than appointing authority to initiate the disciplinary proceeding and award punishment in case he is not the appellate authority so that the delinquent may not loose the right of appeal. In other case, the delinquent has to prove as what prejudice has been caused to him. See :

(i) **Secretary, Min. of Defence and Ors. Vs. Prabhash Chandra Mirdha, AIR 2012 SC 2250** *(para 5).*

(ii) **A. Sudhakar Vs. Postmaster-General, Hyderabad, (2006) 4 SCC 348.**

(iii) **Surjit Ghosh Vs. Chairman & Managing Director, United Commercial Bank, AIR 1995 SC 1053.**

(iv) **Balbir Chand Vs. FCI Ltd., AIR 1997 SC 2229.**

(v) Sampuran Singh Vs. State of Punjab, AIR 1982 SC 1407.

33. **<u>Communication of order/decision to the person concerned must for being binding upon him and the authority</u> :** A decision of the Government/authority must be communicated to the person concerned. It is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the authority (the Council of Ministers) to consider the matter over and over again and, therefore, till its communication, the order cannot be regarded as anything more than provisional in character. See **: Bachhittar Singh Vs. State of Punjab, AIR 1963 SC 395 (Five-Judge Bench).**

34. **<u>Entries in ACR of a pubic servant must be communicated to him whether poor, fair, average, good or very good etc.</u> :** Overruling its two earlier Division Bench rulings reported in the cases of (i) Satya Narain Shukla Vs. Union of India, (2006) 9 SCC 69 and (ii) K.M. Mishra Vs. Central Bank of India, (2008) 9 SCC 120 and giving approval to its earlier Division Bench ruling reported in the case of Dev Dutt Vs. Union of India, (2008) 8 SCC 725, a **Three-Judge Bench** of the Hon'ble Supreme Court, in the case noted below has ruled thus : *"In our opinion, the view taken in Dev Dutt that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving three-fold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR - Poor, fair, average, good or very good - must be communicated to him/her within a reasonable period."* See : **Sukhdev Singh Vs Union of India & Others, 2013 (2) ESC 337 (SC)** *(para 8)* **(Three-Judge Bench).**

35(A). <u>Effect of stay of sentence on conviction on disciplinary proceeding</u> : Suspension of sentence does not amount to temporarily washing out the conviction. The conviction still remains, only the operation of the order and the sentence remains suspended and that does not amount to temporary stay of conviction. See :

(i) Lalsai Khunte Vs. Nirmal Sinha, (2007) 3 SCC (Criminal) 149.

(ii) K. Prabhakaran Vs. P. Jayarajan, AIR 2005 SC 688

(iii) Radhey Shyam Vs. State of UP, 2008 (72) ALR 344 (All)(DB)

(iv) Dr. Surendra Nath Verma Vs. State of UP, 2014 (103) ALR 336 (All)(DB)

35(B). <u>On conviction, authority need not wait for decision in appeal for dismissal of the convicted employee</u> : Taking proceedings for and passing orders of dismissal, removal or reduction in rank of a Government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said Government servant-accused has been released on bail pending the appeal. It cannot be said that until the appeal against the conviction is disposed of, action under clause (a) of the second proviso to Article 311(2) of the Constitution is not permissible. The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2) once a Government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the Government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the Government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, viz., to wait till the appeal, revision and other remedies are over would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court. The action under clause (a) of the second proviso to Article 311(2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311(2). See : **Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, AIR 1995 SC 1364**.

36(A). <u>Tribunals have power to punish for contempt</u> : Tribunals have power to punish for contempt of Court. See **: Madras Bar Association Vs. Union of India, (2015) 8 SCC 583 (Five-Judge Bench).**

36(B). <u>Labour Court's decision not to be treated as Precedent</u> : Labour Court is not a Court of record hence creates no precedents. See… **Rahimuddin & Others Vs. Gossini Fashions Ltd., 2012 (2) SLJ 487 (Delhi High Court).**

37(A).<u>The Uttar Pradesh State District Court Service Rules, 2013</u> : With the coming into force of the 'Uttar Pradesh State District Court Service Rules, 2013' w.e.f. 04.07.2013 vide UP Government's Notification No. 1060/VII-Nyaya-2-2013-176G/2010 Lucknow, dated July 4, 2013, the following Rules governing the service conditions etc of the employees of the District Courts in UP have stood repealed by Rule 29 of the said 2013 Rules :

(i) The Subordinate Civil Courts Ministerial Establishment Rule, 1947
(ii) The Uttar Pradesh Subordinate Civil Courts Inferior Establishment Rules, 1955,
(iii) The Uttar Pradesh Subordinate Courts Staff (Punishment and Appeals) Rules, 1976
(iv) Rule 269 of the General Rules (Civil), 1957

37(B).<u>Procedure for disciplinary proceedings & penalty etc awardable against the employees of District Courts in UP w.e.f. 04.07.2013</u> : Rule 23 of Chapter-VI of the 'Uttar Pradesh State District Court Service Rules, 2013' provides for complete procedure to be adopted in the matter of disciplinary proceedings against the employees of the District Courts in UP and also for the penalty awardable against them and the appeal against such penalties. The said Rule 23 is being reproduced here as under :

Chapter-VI
Discipline & Appeal

Rule 23(1) : One or more of the following penalties for good and sufficient reasons may be imposed on a member of the Service, namely;

Minor Penalties

(i) Censure;
(ii) Withholding of increment for a specified period;
(iii) Stoppage of an efficiency bar;
(iv) Recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders, to the Government or the High Court;
(v) Fine in case of persons holding Group 'D' posts : Provided that the amount of such fine shall in no case exceed twenty five percent of the month's pay in which the fine is imposed**.**

<u>Major Penalties</u> :

(i) Withholding of increments with cumulative effect,
(ii) Reduction to a lower post or grade or time scale or to a lower stage in time scale;
(iii) Removal from service which does not disqualify from future employment
(iv) Dismissal from the service which disqualifies from future employment.

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

(i) Withholding of increment of a member of the service for failure to pass a department examination or for failure to fulfill any other condition in accordance with the rules or orders governing the service.

(ii) Stoppage of the efficiency bar in the time scale of pay on account of one's not being found fit to cross the efficiency bar;

(iii) Reversion of a person appointed on probation to the 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.

(iv) Termination of the service of a person appointed on probation during or at the end of period of probation in accordance with the terms of the service or the rules and orders governing such probation.

(2) Suspension :

(i) A member of the service against whose conduct an enquiry is contemplated, or is proceeding, may be placed under suspension pending the conclusion of the enquiry in the discretion of the appointing authority;

Provided that suspension should not be resorted to unless the allegation against the employee are so serious that in the event of their being established, may ordinarily warrant major penalty;

Provided further that the head of the department by an order in this behalf may place an employee under suspension under this rule;

Provided also that the appointing authority may delegate its power under this rule to the next lower authority.

(ii) An employee in respect of or against whom, an investigation, enquiry or trial relating to a criminal charge, which is connected with his position as an employee of Court or which is likely to be embarrassing in discharge of his duties or which involves moral turpitude, is pending, may, at the discretion of the appointing authority or the authority to whom, the power of suspension has been delegated under these rules, be placed under suspension until the termination of all proceedings relating to the charge.

(iii)(a) an employee shall be deemed to have been placed or, as the case may be continued to be placed, under suspension by an order of the authority competent to suspend, with the date of his detention, if he is detained in

custody, whether detention is on Criminal charge or otherwise, for a period exceeding forty eight hours.

(b) The aforesaid employee shall, after release from the custody, inform in writing to the competent authority about his detention and may also make representation against the deemed suspension. The competent authority shall, after considering the representation in the light of the facts and circumstances of the case as well as the provision contained in rule, pass appropriate order continuing the deemed suspension from the date of release from custody or revoking or modifying it.

(iv) The employee shall be deemed to have been placed, as the case may be, or continued to be placed under suspension by an order of the authority competent to suspend under these rules, with effect from the date of his conviction if in the event of a conviction for an offence he is sentenced to a term of imprisonment exceeding forty eight hours and is not forthwith dismissed or removed consequent to such conviction**.**

Explanation : The period of forty eight hours referred to in sub rule will be computed from the commencement of the imprisonment after the conviction and for this purpose, internment periods of imprisonment, if any, shall be taken into account.

(iv) Where the penalty of dismissal or removal from service imposed upon an employee is set aside in appeal under these rules or under rules rescinded by these rules and the case is remitted for further enquiry or action or with any other directions;

(a) If he was under suspension immediately before the penalty was awarded to him, the order of his suspension shall, subject to any such direction as aforesaid, be deemed to have continued in force on or from the date of the original order of dismissal or removal;

(b) If he was not under suspension, he shall, if so directed by the appellate authority, be deemed to have been placed under suspension by an order of the appointing authority on or from the date of original order of dismissal or removal;

Provided that nothing in this sub rule shall be construed as affecting the power of disciplinary authority, in a case where a penalty of dismissal or removal from service imposed upon a Government servant is set aside in appeal under these rules on grounds other that the merits of the allegations

on the basis of which, the said penalty was imposed and the case is remitted for further enquiry or action or for any other direction, to pass an order of suspension it being further enquiry against him on those allegations, however any such suspension shall not have retrospective effect.

(v) Whether penalty of dismissal or removal from service imposed upon an employee is set aside or declared or rendered void in consequence of or by decision of a Court of law and the appointing authority on a consideration of circumstances of the case, decides of the case, decides to hold a further enquiry against him on the allegations on which the penalty of dismissal or removal was originally imposed, whether the allegations remain in their original form or are clarified their particulars better specified or any part thereof of a minor nature omitted :

(a) If he was under suspension immediately before the penalty was awarded to him, the order of his suspension shall, subject to any direction of the appointing authority, be deemed to have continued in force on or from the date of the original order of dismissal or removal;

(b) If he was under suspension, he shall, if so directed by the appointing authority, be deemed to have been placed under suspension by an order of the competent authority on and from the date of the original order of dismissal or removal**.**

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

(viii**)** Any suspension ordered or deemed to have been ordered by him in force under this rule shall continue to remain in force until it is modified or revoked by the competent authority.

(xi) An employee placed under suspension or deemed to have been placed under suspension under this rule shall be entitled to subsistence allowance in accordance with the provisions of Fundamentals Rule 53 of the Financial Hand Book Volume II, Part II to IV.

(3) **Pay and Allowance etc. of the suspension period :**

After the order is passed in the departmental enquiry on the basis of criminal case, as the case may be, under these rules, the decision as to the pay and allowances of the suspension period of the concerned employee and also whether the said period shall be treated as spent on duty or not, shall be taken by the disciplinary authority after giving a notice to the said employee and calling for his explanation within a specified period under Rule 54 of the Financial Hand Book Volume II, Part II to IV.

(4) <u>Disciplinary Authority</u> : The appointing authority of the member the service shall be the disciplinary authority, who, subject to the provisions of these rules, may impose any of the penalties specified in rule 23.

Provided that no person shall dismissed or removed by an authority subordinate to that by which he was actually appointed.

(5) <u>Procedure of imposing major penalties</u> : Before imposing any major penalty on an employee, an enquiry shall be held in the following manner:-

(i) The disciplinary authority may himself enquire into the charges or appoint any authority subordinate to him as enquiry officer to enquire into the charges.

(ii) The face constituting the misconduct on which is proposed to take action shall be reduced in the form of definite charge or charge or charges to be called Charge-sheet.

The Charge-sheet shall be approved by the disciplinary authority-

(iii) The charges framed shall be so precise and clear as to give sufficient indication to the charged employee of the facts and circumstances against him. The proposed documentary evidences and the name of the witnesses proposed to prove the same along with the oral evidences, if any, shall be mentioned in the charge-sheet.

(iv). The Charged employee shall be required to put in Written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to state whether he desires to cross examine any witness mentioned in the charge-sheet and whether he desired to give or produced evidence in his defence. He shall also be informed that in case he does not appear or file written statement on the specified date, it shall be presumed that he has none to furnish and enquiry officer shall proceed to complete the enquiry ex-parte.

(v). The charge-sheet alongwith the copy of documentary evidences mentioned therein and list of witnesses and their statements, if any, shall be served on the charged employee personally or by registered post at the address mentioned in the official record. In case the charge-sheet could not be served in the aforesaid manner, the charge-sheet shall be served by publication in a daily newspaper having wide circulation:

Provided that where the documentary evidences is voluminous, instead of furnishing its copy with charge-sheet, the charged employee shall be permitted to inspect the same before the enquiry officer:

(vi) Where the charged employee appears and admits the charges, the enquiry officer shall submit his reports to the disciplinary authority on the basis of such admission.

(vii) Where the charged employee denies the charges, the enquiry officer shall be proceed presence of the charged employee who shall be given opportunity to cross examine such witness, After recording the aforesaid evidences, if enquiry officer shall call and record the oral evidences which the charged employee desires in his written statement to be produced in his defence;

Provided that enquiry officer may for reasons to be recorded in writing refuse to call a witness.

(viii) The enquiry officer may summon any witness to give evidence or require any person to produce documents before him in accordance with the provision of the Uttar Pradesh Departmental Enquiries (Enforcement of Attendance of Witness and Production of Documents) Act, 1976.

(ix) Enquiry Officer may ask any question he pleases, at any time from any witness or from person with a view to discover the truth or to obtain proper proof of facts relevant to charges.

(x) Where the charged employee does not appear on the date fixed in the enquiry or at any stage or proceedings in spite of service of notice upon him or having knowledge of the date, enquiry officer shall proceed with the enquiry *ex-parte*. In such a case the enquiry officer shall records the statement of the witnesses mentioned in the charge-sheet in absence of the charger employee.

(xi) The disciplinary authority, if it considers necessary to do so, may appoint an officer or a legal practitioner, to be known as 'Presenting Officer' to present on its behalf the case in support of the charge.

(xii) The charge employee may take assistance of any officer to present a case on his behalf but shall not engage a legal practitioner for the purpose unless the presenting officer appointed by the disciplinary authority having regard to the circumstances of the case so permits:

Provided that this rule shall not applying in following cases:

(a) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge; or

(b) Where the disciplinary authority is satisfied, that for reasons to be recorded in writing, it is not reasonably practicable to hold any enquiry in the manner provided in these rules; or

(c) Where the High Court is satisfied, in the interest of security of the state, that it is not expedient to hold an enquiry in the manner provided in these rules.

(6) **Submission of enquiry report-** When the enquiry is complete, the enquiry officer shall submits its enquiry report to the disciplinary authority along with all the records of the enquiry. The enquiry report shall contain sufficient record of the facts, the evidence and statement of the findings on each charge and the reasons thereof. The enquiry officer shall not make any recommendation about the penalty.

(7) **Action on enquiry report-**

(i) The disciplinary authority may, for reasons to be recorded in writing, remit the case for re-enquiry to the same or any other enquiry officer under intimation to the charged employees. The enquiry officer shall thereupon proceed to hold the enquiry from such stage as directed by the disciplinary authority according to the provisions of Rule 23 (5).

(ii) The disciplinary authority shall, if it disagrees with the findings of enquiry officer or any charge, record it's finding thereon for reason to be recorded.

(iii) In case the charges or not proved, the charged employee shall be exonerated by the disciplinary authority, of the charges and would be informed accordingly.

(iv) If the disciplinary authority, having regard to its finding on all or any of the charges is of the opinion that any penalty specifies in Rule 23 (1) should be imposed on the charged employee, he shall give a copy of the enquiry report and its finding recorded under sub-rule (ii) to the charged regard to all the relevant record relating to the enquiry and representation of the charged employee, if any, pass a reasoned order imposing one or more penalties mentioned in rule 23 (1) of these rules and communicate the same to the charged employee.

(8) **Procedure for imposing minor penalty-**

(i) Where the disciplinary authority is satisfied that good and sufficient reasons exist for adopting such a course, it may, subject to the provisions of sub-rule impose one or more of the minor penalties mentioned in Rule 23 (1).

(ii). The concerned employee shall be carried of the substances of the imputations against him and shall be called upon to submit his explanation within a reasonable time. The disciplinary authority after considering the said explanation, if any, and relevant record, pass such orders as he considers proper and where a penalty is imposed, reasons there for shall be given. The order shall be communicated to the concerned employee.

(9) **<u>Appeals</u>-**

(i) A person against whom as order imposing a penalty specified in rule 23 (1) (i) & (v) of Minor penalties has been passed by the Presiding Officer of subordinate court other than the court of District and sessions Judge, may file an appeal before the Appointing Authority i.e. the District Judge.

(ii) A person against whom an order. Imposing a penalty specified in any of the clauses (i) to (v) of minor penalties and clauses (i) to (iv) of major penalties of Rule 23 (1) , have been passed by the appointing authority, i.e. the District Judge; or

(a) Of enhancement of punishment has been made by the appointing authority i.e. the District Judge in an appeal filed under Clause (i) of this sub-rule, he may file an appeal before the High Court.

(iii) The period during which an appeal may be fold shall be 30 days in case of an appeal filed under Clause (i) of this sub-rule, and 90 days in

the case of an appeal filed under Clauses (i) of this sub-rule. The period of limitation shall count from the date on which the appellant is informed of the order appealed against. The time taken in obtaining the copy of the order appealed against shall be excluded in computing, the period of limitation.

(iv) The appellate authority shall consider-

(a) Whether the facts on which the order was passed have been established,

(b) Whether the facts established afford sufficient grounds for taking action; and

(c) Whether the penalty is excessive, adequate or inadequate and after consideration, the appellate authority shall pass such order as appealed to it just and equitable having regard to all the circumstances of the case.

(v) Every memorandum of appeal shall contain all material facts, statements, and arguments relied upon by the appellant, shall not contain disrespectful or improper language and shall be complete in itself.

(vi) An appeal may be withheld by the District Judge if-

(a) It is an appeal in a case in which no appeal lies under these rules; or

(b) It does not comply with a requirement of these rules;

Or

(c) It is barred by time and no cause explaining the delay is stated in the memorandum of appeal; or

(d) It is repetition of the previous appeal and no new facts or circumstances have been stated which afford good ground for reconsideration of the case:

Provided that where any cause for delay in filing the appeal is stated in the memorandum of appeal. The District Judge shall not withhold it on the ground that the cause stated is not reasonable.

(vii) Where an appeal is withheld, the appellant shall be informed Of the facts of the reasons therefor;

Provided that an appeal withheld on account of failure to comply with the requirement of these rules may be resubmitted within one month of the date on which the appellant is informed of withholding the appeal and if re submitted in shall not be withheld.

(viii) No appeal shall lie against withholding of appeal by the District Judge.

(ix) A list of appeals withheld under Clauses (vi) of the sub-rule with the reasons for withholding the same shall be forwarded quarterly to the appellate authority.

(x) The appellate authority may call for the record of an appeal withheld by District Judge and may pass such orders thereon as it considers just and proper.

(10) Opportunity before imposing or enhancing penalty: No order under sub rule (9) imposing or enhancing penalties shall be made unless the concerned employee has been given a reasonable opportunity of showing cause against the proposed imposition or enhancement, as the case may be.

38. <u>Provisions as to suspension, deemed suspension, FIR, arrest & detention of the employee, criminal proceedings, subsistence allowance etc as provided by Rules 4, 5 & 6 of the UP Government Servant (Discipline & Appeal) Rules, 1999</u> :

Rule 4. Suspension:- (1) A Government servant against whose conduct an inquiry is contemplated, or is proceeding may be placed under suspension pending the conclusion of the inquiry in the discretion of the appointing authority:

Provided that suspension should not be resorted to unless the allegations against the Government servant are so serious that in the event of their being established may ordinarily warrant major penalty:

Provided further that concerned Head of the Department empowered by the Governor Servant or class of Government servant or class of Government servants belonging to Group 'A' and 'B' posts under suspension under this rule:

Provided also that in the case of any Government servant or class of Government servants belonging to Group 'C' and 'D' posts, the appointing authority may delegate its power under this rule to the next lower authority.

(2) A Government servant in respect of, or against whom an investigation, inquiry or trial relating to a criminal charge, which is connected with his position as a Government servant or which is likely to embarrass him in the discharge of his duties or which involves moral turpitude, is pending, may at the direction of the appointing authority or the authority to whom the power

of suspension has been delegated under these rules, be placed under suspension until the termination of all proceedings relating to that charge.

(3)(a) A Government servant shall be deemed to have been placed or, as the case may be, continued to be placed under suspension by an order of the authority competent to suspend, with effect from the date of his detention, if he is detained in custody, whether the detention is on criminal charge or otherwise, for a period exceeding forty-eight hours.

(b) The aforesaid Government servant shall, after the release from the custody, inform in writing to the competent authority about his detention and may also make representation in the light of the facts and circumstances of the as well as the provision contained in this rule, pass appropriate order continuing the deemed suspension from, the date of release from custody or revoking or modifying it.

(4) Government servant shall be deemed to have placed or as the case may be, continued to be placed under suspension by an order of the authority competent to suspend under these rules, with effect from the date of his conviction if in the event of a conviction for an offence he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed consequent to such conviction.

Explanation.- The period of forty-eight hours referred to in sub-rule will be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken to account.

(5) Where a penalty of dismissed or removal from service imposed upon a Government servant is set aside in appeal or on review under these rules rescinded by the rules and the case in remitted for further inquiry or action or with any other directions:

(a) If he was under suspension immediately before the penalty was awarded to him, the order of his suspension shall, subject to any such directions as aforesaid, be deemed to have continued in force on and from the date of the original order of dismissal of removal;

(b) If he was not under suspension, he shall, if so directed by the appellate or reviewing authority, be deemed to have been placed under suspension by an order of the appointing authority on and from the date of the original order of dismissal or removal:

Provided that nothing in this sub-rule shall be construed as affecting the power of the disciplinary authority in a case where a penalty of dismissal or removal in service imposed upon a Government servant is set aside in appeal or on review under these rules on grounds other than the merits of the allegations which, the said penalty was imposed but the case remitted for further inquiry or action or with any directions to pass an order of suspension pending further inquiry against him on those allegations so, however, that any such suspension shall not have retrospective effect.

(6) where penalty of dismissal or removal from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of law and the appointing authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal or removal was originally from or are clarified or their particulars better specified or any part thereof a minor nature omitted

(a) If he was under suspension immediately before the penalty was awarded to him, the order of his suspension shall, subject to any such directions as aforesaid, be deemed to have continued in force on and from the date of the original order of dismissal of removal;

(b) If he was not under suspension, he shall, if so directed by the appellate or reviewing authority, be deemed to have been placed under suspension by an order of the appointing authority on and from the date of the original order of dismissal or removal:

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

(8) Any suspension ordered of deemed to have been ordered or to have continued in force under this rule shall continue to remain in force until it is modified or revoked by the competent authority.

(9) A Government servant placed under suspension or deemed to have been placed under this rule shall be entitled to subsistence allowance in

accordance with the provisions of Fundamental Rule 53 of the Financial Hand Book, Volume II Parts II to IV.

Rule 5. Pay and allowances etc. of the suspension period.- After the ordered is passed in the departmental enquiry or in the criminal case, as the case may be, under these rules, the decision as to the pay and allowances of the suspension period of the concerned Government servant and also whether the said period shall be treated spent on duty or not, shall be taken by the disciplinary authority after giving a notice to the said Government servant and calling for his explanation within a specified period under Rule 54 of the Financial Hand Book, Volume II Parts II to IV.

Rule 6. Disciplinary authority.- The appointing authority of a Government servant shall be his disciplinary authority, who, subject to the provisions of these rules, may impose any of the penalties specified in Rule 3 on him:

Provided that no person shall be dismissed or removed by an authority subordinate to that by which he was actually appointed:

Provided further that the Head of department notified under Uttar Pradesh class II Services (Imposition of Minor Punishment) Rules, 1973, subjects to the provisions of these rules, shall be empowered to impose minor penalties mentioned in Rule 3 of these rules:

Provided also that in case of a Government servant belongings to Group 'C' and 'D' posts, the Government, by a notified order, may delegate the power to impose any penalty, except dismissal or removal from service under these rules, to any authority subordinate to the appointing authority and subject to such conditions as may be prescribed therein.

39. <u>Procedure for imposing major penalties as provided by rule 7 of the U.P. Government Servant (Discipline & Appeal) Rules, 1999</u> : Rule 7 of the said 1999 Rules provides for observance of following procedure before awarding any major penalty as provided under rule 3 against a Government Servant:

Rule 7: Procedure for imposing major penalties:- Before imposing any major penalty on a Government Servant, an inquiry shall be held in the following manner:

(i) The disciplinary authority may himself inquire into the charges or appoint an authority subordinate to him as Inquiry Officer to inquire into the charges.

(ii) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge-sheet. The charge-sheet shall be approved by the disciplinary authority.

Provided that where the appointing authority is Govern, the charge-sheet may be approved by the Principal Secretary or the Secretary; as the case may be, of the concerned department.

(iii) The charges framed shall be so precise and clear as to give sufficient indication to the charged Government servant of the facts and circumstances against him. The proposed documentary evidence and the name of the witnesses proposed to prove the same alongwith oral evidence, if any, shall be mentioned in the charge-sheet.

(iv) The charged Government servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to state whether he desires to cross-examinee any witness mentioned in the charged-sheet and whether desires to give or produce evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and Inquiry Officer shall proceed to complete the inquiry ex-parte.

(v) The charge-sheet alongwith the copy of the documentary evidences mentioned therein and list of witnesses and their statements, if any shall be served on the charged Government servant personally or by registered post at the address mentioned in the official records, In case the charge-sheet could not be served in aforesaid manner, the charge-sheet shall be served by publication in a daily newspaper having wide circulation:

Provided that where the documentary evidences in voluminous, instead of furnishing its copy with charge-sheet, the charged Government servant shall be permitted to inspect the same before the Inquiry Officer.

(vi) Where the charged Government servant appears and admits the charges, the Inquiry Officer shall submit his report to the disciplinary authority on the basis of such admission.

(vii) Where the charged Government servant denies the charges, the Inquiry Officer shall proceed to call the witness proposed in the charge-sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross-examine such witnesses, After recording the aforesaid evidence, the Inquiry Officer shall call and record the oral evidence which the charged Government servant desires in his written statement to be produced in his defence:

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

(viii) The Inquiry Officer may summon any witness to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of attendance of Witness and Production of Documents) Act, 1976.

(ix) The Inquiry Officer may ask any question he pleases, at any time of any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges.

(x) Where the charged Government servant does not appear on the date fixed in the Inquiry or at any stage of the proceedings in spite of the service of the notice on him or having knowledge of the date, the Inquiry Officer shall be proceed with the inquiry *ex parte.* In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged Government servant.

(xi) The disciplinary authority, if it considers it necessary to do so, may, by an order appoint a Government servant or a legal practitioner, to be known as "presenting Officer" to present on its behalf the case in support of the charge.

(xii) The Government servant may take the assistance of any other Government servant to present the case on his behalf but not

engage and legal practitioner for the purpose unless the Presenting officer by the disciplinary authority is a legal practitioner of the disciplinary authority having regard to the circumstances of the case so permits:

Provided that this rule shall not apply in following cases:

(i) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge;

or

(ii) Where the disciplinary authority is satisfied that for reason 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 Governor 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.

40(A). **<u>Different Steps in a Final Enquiry</u> :** In a final enquiry, different steps which are taken by the disciplinary authorities and the enquiry officers are as under :

1. Order by disciplinary authority instituting final enquiry by appointing enquiry officer or enquiry committee.
2. Appointing Presenting Officer by the disciplinary authority
3. Framing of charges by the enquiry officer.
4. Approval of the charges by the disciplinary authority.
5. Supply of charge-sheet to the delinquent employee along with the copies of the documents to be relied on in support of charges framed against the delinquent employee.
6. Mentioning of the names of witnesses in the charge-sheet proposed to be examined by the enquiry officer in support of the charges.
7. Providing reasonable opportunity to the delinquent employee to submit his reply/written statement against the charges framed.

8. Notifying the venue, date and time to the delinquent employee for holding the enquiry.
9. Providing opportunity to the delinquent employee for cross-examination of the witnesses examined by the department in support of the charges.
10. Providing copies of the statements of the depositions of the witnesses examined by the enquiry officer during the enquiry.
11. Providing copies of all such documents to the delinquent employee as have been relied on by the enquiry officer in support of the charges.
12. Providing opportunity to the delinquent employee to produce his documents and examine his witnesses in his defence against the charges.
13. Providing opportunity to the delinquent employee for personal hearing by the enquiry officer.
14. Providing opportunity by the enquiry officer to the delinquent employee for oral or written arguments.
15. Preparing enquiry report in triplicate by the enquiry officer by recording clear findings on every aspect of the guilt or liability of the delinquent employee by taking into consideration all the evidence, oral and documentary, led by both sides during the course of enquiry.
16. Submitting all the three copies of the final enquiry report to the disciplinary authority by the enquiry officer in a sealed cover together with his covering letter.
17. Enquiry Officer not to propose any particular penalty to be inflicted on the delinquent employee unless so directed by the disciplinary authority in his order.

40(B).<u>How to Prepare a Final Enquiry Report</u> ? : Different steps to be taken towards preparing a final enquiry report are as under :

1. Begin with briefly quoting the material allegations leveled against the delinquent in the complaint by quoting the name/address etc. of the complainant, name/designation of the Disciplinary Authority ordering the enquiry alongwith the date of order passed by him appointing the Enquiry Officer.
2. Quote the first charge framed against the delinquent.
3. Quote the relevant part of the reply given by the delinquent against the said charge.
4. Now quote the name of witnesses examined in support of the charge and also quote the relevant/material/portion of the statement of the witnesses recorded in support of the charge.
5. Now quote the documents relied on and produced in support of the charge and also the name and the statement of the witness who had proved the said document or documents.
6. Also quote the name of the Defence Witness or the defence document, if any, produced by the delinquent in contradiction of the oral and documentary evidence produced by the Department/Prosecution in support of the charge against the delinquent.
7. Now the Enquiry Officer should discuss and appreciate the documentary and oral evidence led by both sides in support of and against the charge framed. The Enquiry Officer should then clearly record his findings derived from the documentary and oral evidence and should clearly conclude whether or not the guilt of the delinquent as mentioned in the charge is proved.
8. Only that much part of the oral and documentary evidence should be quoted in the enquiry report which is really required for discussions on the charge or

the controversies involved in the enquiry. Unnecessary or irrelevant part of the evidence should normally be avoided and not quoted. The derivative or the conclusion derived from the appreciation of evidence should be recorded in the form of clear findings in the enquiry report.

9. If the Enquiry Officer records findings that the charge/guilt of the delinquent is proved then he must mention the conduct rule breach whereof has been found proved during the enquiry.

10. The above exercise must be completed and observed by the Enquiry Officer in respect of each charge framed against the delinquent.

11. The enquiry report should be then signed by the Enquiry Officer under his full signature, name, designation and date.

12. Normally no penalty to be inflicted upon the delinquent should be suggested by the Enquiry Officer to the Disciplinary Authority unless he is called upon in writing by the Disciplinary Authority to do the same.

13. The enquiry report in triplicate along with a covering letter addressed to the Disciplinary Authority and kept in a sealed cover should be sent by the Enquiry Officer to the Disciplinary Authority.

40(C).<u>Stepwise Duty of Disciplinary Authority after Receiving the Final Enquiry Report from the Enquiry Officer</u> :

1. The Disciplinary Authority shall send a copy of the final enquiry report alongwith his covering letter to the delinquent inviting his comments/objections against the final enquiry report by the date fixed in his letter.

2. The Disciplinary Authority, after receiving the comments/objections/representation from the delinquent, shall consider the enquiry report and also the comments/objections received from the delinquent and thereafter shall pass a reasoned and speaking order expressing his clear opinion as to whether he is agreed with the conclusions of the Enquiry Officer recorded by him in his final enquiry report or not. In case the Disciplinary Authority is agreed with the conclusions arrived at by the Enquiry Officer in his final enquiry report, the Disciplinary Authority

shall accept the enquiry report and in the same order reject the comments/objections of the delinquent submitted against the final enquiry report by passing a reasoned and speaking order.

3. The Disciplinary Authority shall then send another letter to the delinquent alongwith a copy of his above order apprising the delinquent that the final enquiry report has been accepted by him by rejecting the delinquent's comments/objections/representation. In the same letter the Disciplinary Authority shall propose the penalty to be inflicted upon the delinquent and shall call for his comments/representation against the proposed penalty. In the same letter the Disciplinary Authority shall also provide an opportunity of personal hearing to the delinquent by specifying in the letter the venue, date & time for such personal hearing of the delinquent before him.

4. After considering the comments/representation/defence-pleas taken by the delinquent in writing and also during his personal hearing against the proposed penalty and also the nature and seriousness of the guilt proved against the delinquent, the Disciplinary Authority shall pass a reasoned and speaking order whether he accepts or rejects the representation/comments/defence-pleas taken by the delinquent or not. In the same order, the Disciplinary Authority shall award a suitable penalty against the delinquent. While awarding the final penalty, the Disciplinary Authority must not award any such penalty which has not been prescribed in the Rules/Statutes governing the service conditions of the delinquent. In other words, the Disciplinary Authority has to award any one of the penalties prescribed in the Rules/Statutes.

5. The copy of the order containing penalty awarded by the Disciplinary Authority should be sent or got received by the delinquent and a copy of the same should also be sent to the Registrar of the University for making consequential entries in the relevant record of the University.

6. Since the Board of Management is the appointing authority in the Agricultural Universities and the Executive Council in the State Universities, therefore, after receiving the comments of the delinquent against the final enquiry report and also against the proposed penalty the same should be placed by the Vice-Chancellor before the Board/Executive Council for it's decisions as stated in the preceding paragraphs.

Note : As regards the question of determination of penalty to be proposed and imposed against the delinquent, it is always discretionary with the Board/Executive Council to constitute a Committee to advise/propose the penalty to be inflicted on the delinquent in the light of the gravity and nature of the proven misconduct of the delinquent. However, the Appointing Authority i.e. the Board or the Executive Council is not bound by the penalty advised/proposed by such Committee and it may, in its discretion, inflict any

suitable penalty prescribed in the Statutes against the delinquent. However, the penalty awarded must be commensurate with the nature and gravity of the proven misconduct of the delinquent.

41. **Suspension of clerk by Officiating District Judge held proper** : Where a clerk was suspended by the Officiating District Judge, Fatehpur for the allegations that the clerk had used unparliamentary language against the In-charge District Judge on 01.01.2016 and had misbehaved with him and appeared to be in a state of intoxication, the suspension order passed by the In-charge District Judge was held proper by the Allahabad High Court. Interpreting the provisions of Article 309 of the Constitution of India, Rule 23(2) of the Uttar Pradesh State District Court Service Rules, 2013 and Section 10 of the Bengal, Agra & Assam Civil Courts Act, 1887, it has further been observed that the Additional District Judge in the absence of the District Judge was statutory delegatee as there was no delegation of power by the District Judge and being a statutory delegateee, the In-charge District Judge could not have further delegated his powers. But the suspension of the clerk by the In-charge District Judge pending enquiry was not penal in nature and the suspension order passed by him was proper. See : **Siddharth Pandey Vs. State of UP, 2016 (3) ALJ 316 (All)**

42. **Requirement of consultation with the Public Service Commission under Article 320(3)(c) of the Constitution before awarding penalty only directory:** Requirement of consultation with the Public Service Commission under Article 320(3)(c) of the Constitution before awarding penalty to a government servant is only directory and not mandatory. Absence of consultation or any irregularity in consultation process or in furnishing copy of advice tendered by the Public Service Commission to delinquent does not render the penalty invalid. See: **Union of India Vs. T.V. Patel, (2007) 4 SCC 785, (ii) State of U.P. Vs. Manvodhan Lal Srivastava, AIR 1957 SC 912 (Five-Judge Bench), and (iii) Ram Gopal Chaturvedi Vs. State of M.P. (1969) 2 SCC 240.**

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