DISCIPLINARY PROCEEDINGS
&
CHARGE MEMORANDUM

2025

VIGILANCE DEPARTMENT
HINDUSTAN COPPER LTD

ADMINISTRATIVE VIGILANCE

- Administrative vigilance in India involves a system of monitoring and enforcing ethical standards and accountability within government departments and organizations.
- Central Vigilance Commission (CVC) is the apex body for maintaining probity in public life. Each department and organization also has a vigilance wing, typically headed by a Chief Vigilance Officer (CVO), who works alongwith the CVC to prevent and detect corruption and misconduct.

VIGILANCE ADMINISTRATION

The Central Vigilance Commission (CVC) provides necessary guidelines for effectively carrying out vigilance administration in all departments and organisations including autonomous bodies through various circulars/ directives.

VIGILANCE TYPES

1. **Preventive**
2. **Surveillance & Detection**
3. **Punitive**

Vigilance activities focus on both proactive measures to prevent corruption and reactive measures to address and punish wrongdoing.

PREVENTIVE VIGILANCE

Preventive vigilance involves studying the organization, its policies and its people; and implementing effective measures so that these do not become vulnerable to corruption.

It includes following actions:

To checks points and causes of delay, devise measures to avoid arbitrary use of discretion, review regulations whether these are at all needed, educate citizens about procedures, identify areas prone to corruption, ensure availability of clear guidelines and required manuals, ensure observance of Conduct rules, Advising the Disciplinary and appellate authorities in Vigilalnce cases, preparing secret lists.

SURVEILLANCE & DETECTION

This type of Vigilance includes:

- Regular & Surprise inspections in sensitive areas
- Intensive examinations of the projects/works
- Scrutiny of the annual property returns & intimations
- To gather intelligence about misconducts/malpractices

PUNITIVE VIGILANCE

Punitive vigilance is a type of vigilance focused on responding to and punishing misconduct or corruption after it has occurred.

Aims to deter future misconduct by ensuring that those who engage in corrupt practices are held accountable and penalized.

Actions include:

- Receiving and scrutinizing complaints.
- Investigating allegations of misconduct.
- Processing investigation reports and obtaining necessary approvals.
- To ensure timely and proper disciplinary proceedings.
- Coordination with CBI and CVC .

KEY ASPECTS OF DISCIPLINARY PROCEEDINGS

Purpose: To address misconduct or performance issues, uphold standards of conduct, and potentially impose penalties.

Process:

- Involves a structured procedure, typically starting with an initial investigation and potentially progressing through various stages, including warnings, meetings, and formal inquiries.
- Principles of natural justice are essential to ensure due process.

Penalties: Penalties can range from verbal warnings to suspension, demotion, or even termination, depending on the severity of the misconduct.

Rules and Procedures: Governed by specific rules and regulations, including those outlined in the Central Civil Services (Classification, Control and Appeal) Rules, 1965. PSUs have their own CDA rules more or less aligned to the CCS(CCA) Rules.

Appeal Rights: Employees have the right to appeal decisions made in disciplinary proceedings.

WHAT IS DISCIPLINE ?

Discipline is fundamental to success to individual, organizations and societies.

It bridges between goals and accomplishments.

It's not merely about adhering to rules but about cultivating self-control, consistency, and purpose-driven actions.

Achieved through Ethics (नैतिकता) and Integrity (सत्यनिष्ठा).

WHAT IS APPEAL ?

A legal process that allows a party to request a higher authority to review and potentially alter the decision of a lower authority.

This mechanism is fundamental to ensuring

1. Fairness
2. Consistency
3. Accountability

It is called as Principles of Natural Justice

FOUR PRINCIPLES OF NATURAL JUSTICE

(1) No one should be punished unheard.

Reasonable opportunity needs to be provided.

(2) No one can be a judge in his own case.

(3) Justice should not only be done, it should appear to have been done.

(4) The final order should be a Speaking Order.

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REASONABLE OPPORTUNITY

The reasonable opportunity implies that :

(1) CO must be informed of charges.

(2) Should know evidence led in support of charges

(3) Should be allowed to inspect documents,

(4) Should be allowed to cross-examine witnesses

(5) Should be able to lead evidence in his defence

In nut shell, CO must be granted all the reasonable opportunity to defend himself.

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WHY DO WE CONDUCT INQUIRY BEFORE PUNISHMENT ?

Mainly for ensuring Natural Justice !!

PART-XIV of Constitution : Deals with Services matters under Articles 309, 310 and 311 are relevant

Art 309 : Gives power to legislature to enact laws relating to service

Art 310 : Doctrine of Pleasure

Exception: Constitutional posts e.g. SC & HC Judges, CEC, UPSC Chairman and members etc.

ART 311 IS REASON FOR INQUIRY

Art 311 : Some protection and natural Justice for Public Servants

1. No one can be Dismissed or Removed by an authority lower than Appointing Authority.
2. No one can be Dismissed or Removed without being heard.

Therefore, detailed Inquiry is conducted by appropriate authority for reasonable opportunity to hear before punishing him.

Role of Disciplinary Authority

Disciplinary authority refers to the authority competent to impose any of the penalties listed in Rule 11 of CCS (CCA) Rules, 1965.

Role of DA is very crucial as all the departmental cases are handled by him.

Even for vigilance cases, the Disciplinary authority can finally disagree with Vigilance/CVC and exonerate any Officer or reduce his punishment.

He gives comments in Prosecution cases also in CBI cases.

DO WE CONDUCT INQUIRY IN ALL CASES BEFORE PENALISING ?

Inquiry is not conducted in these conditions and penalty can be imposed based on SCN :

1. Misconduct lead to Conviction in the court
2. DA is satisfied that it is not practical to hold inquiry.
3. President is satisfied that it is not in the interest of security of State.

It’s not a violation of ‘Principals of Natural Justice’ ?

PRINCIPALS OF NATURAL JUSTICE

Natural justice is not applied where the rules are clear. It is applicable in the grey area.

As stated by Hon’ble SC (in case of S.L. Kapoor v. Jagmohan (1980) 4 SCC 379),

It can't be applied in vacuum without reference to the circumstances of the case.

It is no unruly horse (which can't be tamed).

WHAT ARE RELEVANT CODES ?

1. Indian Penal Code (IPC) : Bharatiya Nyaya Sanhita
2. Criminal Procedure Code (Cr.PC) : Bharatiya Nagarik Suraksha Sanhita
3. Indian Evidence Act : Bharatiya Sakshya Adhiniyam
4. Prevention of Corruption Act

IPC : It is equivalent to Service Conduct Rules

Cr.PC : It is equivalent to Disciplinary & Appeal Rule

STANDARD OF PROOF

Standard or Level of proof refers to the quality of evidence produced to establish a fact.

Generally following levels of proof are referred :

(a) Preponderance of probability for departmental proceedings

(b) Proof beyond reasonable doubt for criminal proceedings

Preponderance of probability means “more likely to have happened than otherwise”

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ISSUANCE OF CHARGESHEET

- In some cases, based on the fact-finding investigation, charge sheet is issued to the delinquent official. Whereas, in some cases, before any disciplinary proceedings are initiated, a memo calling for explanation is issued by the DA to the delinquent official.
- The delinquent official may or may not reply to the memo within the stipulated time. Subsequently the DA may issues a charge sheet in the absence of the reply to the memo or due to unsatisfactory reply to the memo.
- Upon receipt of Chargesheet, the employee is supposed to reply (called statement of defence).

(a) On receipt of the written statement of defence, the DA may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary to do so, appoint an Inquiring Authority for the purpose.

(b) If no written statement of defence is submitted by the Government servant, DA may itself inquire into the articles of charge, or may, if it considers it necessary to do so, appoint an Inquiring Authority for the purpose.

DOCUMENTS GIVEN TO IO & PO

- DA shall forward to the IO & PO

i. Copy of the Chargesheet alongwith various annexures

ii. Copy of the **written statement of the defence**, submitted by the Government servant;

  – If reply not submitted, then prrof of receipt of chargesheet by CO.

iii. Copy of the **statements of witnesses**, if any,

iv. Evidence proving the delivery of the documents to the Government servant; and

v. a copy of the order appointing the "**Inquiry Officer & Presenting Officer**".

CONDUCT OF INQUIRY

Conduct of inquiry comprises the following main stages:

a) **Pre-hearing stage:** From the appointment of IO and PO till the commencement of hearing. During this stage, the IO and PO examine the documents received by them and ensure their correctness. Besides, the PO prepares for the presentation of the case.

b) **Preliminary Hearing Stage:** Parties Appear before the IO. CO is asked as to whether the charges are admitted, inspection of documents take place, CO presents the list of documents and oral witnesses required for the purpose of defense.

c) **Regular hearing stage:** Evidence is produced by the parties.

d) **Post hearing stage:** PO and CO submit their written briefs to the IO and the IO submits his/her report to the Disciplinary Authority.

ROLE AND FUNCTIONS OF IO

Basic responsibility of the Inquiry Officer is to inquire into the truth of the imputations of misconduct or misbehavior against a Government Servant.

The IO has to document, to analyze and to recommend whether the charges are proved or not.

ROLE AND FUNCTIONS OF PO

PO is required to lead the evidence of the Disciplinary Authority and satisfactorily answer the contentions raised by the Charged Officer(CO). Thus, the explicit functions of PO are:

a) Presenting the documentary evidence
b) Leading the oral evidence on behalf of the disciplinary authority
c) Cross examining the defence witness and examination – chief and re-examination of State/Management Witnesses
d) Preparation and presentation of the written brief

SUBMISSION OF INQUIRY REPORT

- IO to submit report within period of 6 months to Disciplinary Authority

- Where it is not possible to adhere the time limit, extension can be sought for maximum 6 months at a time from disciplinary authority

Timely finalization of departmental proceedings is necessary for Natural Justice. (CVC dated 09-03-2010) (CVC 23.05.2000, DoPT 14.10.2013, 14.12.2020, 08.10.2021)

ACTION ON INQUIRY REPORT

- DA, for reasons to be recorded in writing remit the case to the same or another Inquiry Authority
- DA shall provide a copy of Inquiry Report to the charged officer along with his own observations thereon, if any. CO is given opportunity to reply which will be perused by DA.
- In case any of the penalties to be imposed, DA will make an Order imposing such penalty.
- If DA is of the opinion that no penalty is called for, it may pass an order exonerating the employee concerned.

APPEAL

- An employee may appeal against a order imposing upon him any of the penalties or against order of suspension to AA
- An appeal **shall be preferred within one month** from the date of communication of order
- Appeal **shall be addressed to the AA and shall be submitted to DA** which will be **forwarded to the AA together with DA's comments within 15 days**
- **AA may pass orders** confirming, enhancing, reducing or setting aside the penalty or remit the case to authority which imposed penalty
- **In case penalty is to be enhanced, show cause notice** to be issued to CO

REVIEW

Reviewing authority may call for the record of any case **within six months** of the date of final order, pass such orders thereon as it may deem fit.

THE ART OF DRAFTING CHARGE SHEET

- Collect all the original records relating to the misconduct

- To divide the sheet of paper into four parts and to write down the statement of imputations of misconduct first in the central portion giving the exact chronological sequence of events as per the form given below:

Annexure III	Annexure II	Annexure IV	Article I

Quick Recap - Drafting Charge sheet - Skill

Article of Charge	Statement of Imputation	List of Documents	List of Witnesses
Annexure - 3	**Annexure - 1**	**Annexure - 2**	**Annexure - 4**
Sh XYZ, Asstt Manager in ABC division has submitted false LTC claim for Block Year 2022-23 for self and family. By this he has violated Rule 3(i) of CCS Conduct Rules	Sh XYZ is working as Assistant Manager in ABC division.		
	Submitted Claim for LTC reimbursement and Leave Encashment	Copy of Claim and leave application	
	All trains to that area was cancelled due to flood	Northern Railways Notification	
	Adm crossed checked and got same response	Letter to NR Response of NR	
	School Teacher confirmed that children were in school		School Teacher

SIGNATURE ON THE CHARGE SHEET:

- If the President is the DA – An officer authorized under Article 77(2) of the Constitution to authenticate the order on behalf of President.
- In cases where the DA is other than the President – DA itself to sign the charge sheet. (Ref: OM No 43020/14/2021-Estt.A-III dated 08.11.2021)

CHARGE SHEET FOR MAJOR OR MINOR PENALTY PROCEEDINGS

Hota Committee in its report has observed as follows:

“46. In our view, a minor penalty Disciplinary Inquiry can be concluded within a maximum period of sixty days from the date of service of the Articles of Charge. …….. In our opinion, a minor penalty swiftly but judiciously imposed by a Disciplinary Authority is much more effective than a major penalty imposed after years spent on a protracted Inquiry.”

ISSUING AUTHORITY

- Rule 8(4) of AIS(D&A) Rules provides that the Disciplinary Authority ‘shall draw up or cause to be drawn up’ the charge sheet.
- Hon’ble Supreme Court in Union of India Vs. B V Gopinath (2014) 1 SCC 351, : “49. Although number of collateral issues had been raised by both parties, we deem it appropriate not to opine on the same as charge sheet having not been approved by the disciplinary authority was *non-est* in the eye of law.”

Miss Seema Jain vs Raj High Court And Anr ... on 7 July, 2023

- This Court is not considering the nature of punishment and quantum imposed on the petitioner in the present case at hand as it is confining to the issue of competence of **Disciplinary Authority** to issue **charge-sheet**

CAN LENDING AUTHORITY ISSUE CS FOR BORROWING PERIOD

- When an employee is on deputation, the right to initiate disciplinary action is with the borrowing authority.
- Here, the borrowing authority though conducted a preliminary inquiry did not issue any charge-sheet to the petitioner nor made any effort to conduct a regular inquiry
- Hence Rule 20, squarely apply and accordingly, the charge-sheet by the lending institution to the petitioner, could not have been issued.

IMPACT OF INACCURATE CHARGE

- “Inadequate skill in drafting the charge-sheet is one of the reasons which help the charged officials to get away with lapses/misconduct committed by them.
- Sometimes the charge itself is framed in a very general way, only pointing out that the official concerned has acted in an unbecoming manner or has shown lack of devotion to duty or has acted without integrity.
- The organisations/ Ministries etc. while framing the charge sheets list serious irregularities/charges in the imputations but do not mention the same in the articles of charge.”

- CVC No.3(v)/99/8 dated 5th October,1999

SPECIFIC, CLEAR & COMPLETE CHARGES

- No inquiry can be held on the basis of a vague charge. In such a situation the disciplinary authority or the authority who framed the charges shall be directed to particularize them.
- {Transport Commr. V.A Radha krishna Moorthy (1995) SCC 332}

ADDITION TO CHARGES DURING INQUIRY

- Explanation under Rule 8(24) -
- If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of charge, it may record its findings on such article of charge:
- Provided that the findings on such article of charge shall not be recorded unless the member of the Service has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge

MORE THAN ONE SIMULTANEOUS PROCEEDINGS AGAINST EMPLOYEE

-Indian Drugs & Pharmaceuticals vs. R.K. Shewaramani,2005(6),SC

- “There is no requirement in law that for continuing with fresh proceedings the charge sheet issued must indicate that the previous proceedings pending have been given a go by.
- The employer is free to proceed in as many departmental proceedings as it considers desirable.
- Even in a hypothetical case in two of the departmental proceedings the finding is in favor of the delinquent employee, yet in another departmental proceeding finding adverse to the delinquent officer can be recorded”

SIMULTANEOUS PROSECUTION & DEPARTMENTAL PROCEEDINGS

No bar in simultaneous proceedings as explained in DoPT OM dated 21.07.2016 and CVC circular dated 31.07.2018.

It is based on SC Judgment 1996: State of Rajasthan v/s B.K. Meena 6 SCC 417 : Hon'ble SC stated

CO can't be allowed in office for long, awaiting result of criminal proceedings

It was upheld by SC (1999) in Capt. M.Paul Anthony v/s Bharat Gold Mines Ltd.

The misconduct must be specified and defined with precision and accuracy.

{A.L. Kalra vis P. & E Corpn of India Ltd AIR 1984 SC 1361}

Guidelines on drafting of Charge-Sheet

- While drafting a charge-sheet it is, not necessary to use the words ‘allegation, simply stating that he committed such an such misconduct does not amount to pre-judging and shall not vitiate the proceedings.

- {Sankari Pada Mukherjee, (1986) ATR 424}

The disciplinary authority must apply its mind to the relevant material before instituting the proceedings. He cannot act under direction of a higher officer.

{Union of India vs B.N. Jha Air SC 2054 of 2002}

REMOVAL POSSIBLE ONLY ON CS ISSUED BY APPONTING AUTHORITY

Shri Subhash Rohilla vs Union Of India & Others : 29 June, 2015

- The **Disciplinary Authority**'s order is against Rule 16 of the Railway Servant (Discipline & Appeal) Rules, 1968 as the removal order was passed by incompetent **authority** because the Sr. DFM was only his **Disciplinary Authority** and not his appointing **authority**.
- Under Railway Servant's and Discipline & Appeal Rules, 1968, the punishment of removal from service can be imposed upon an employee only by the appointing **authority** and in his case it was the FA& CAO/ Northern Railway, Baroda House, New Delhi. Hence the **disciplinary authority**'s order is against the rules and as such it is null and void in the eyes of law.

WHO IS APPOINTING AUTHORITY

(i) Authority empowered to make appointments to Service, grade or Post in which the Govt servant is presently included, or

(ii) the authority which actually appointed Govt servant to such Service, grade or post.

Appointing Authority goes by factum and not by rule. If an employee is actually appointed by a higher authority, he shall be taken as Appointing Authority

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Withdrawal of Charge Sheet to issue a fresh one

Judgment dated 19 March 2013 in W.P.(C) NO.7615/2008 Shri S.M. Dongarwar vs Pec Limited

- If departmental proceedings are still to take place i.e. both the parties have to lead evidence and the inquiry officer has to give a report, there is no prejudice in issuing of a fresh charge-sheet once the corporation found that there was additional material
- There is no principle of estoppel with respect to articles of charges once the new articles of charges seek to add facts which in any case have yet to be enquired into.

ISSUE OF FRESH CHARGE SHEET AFTER THE FIRST IS WITHDRAWN

- There is no infirmity in the issue of a fresh charge sheet after the earlier one is withdrawn.

- The second charge sheet is not tenable only if the earlier charges were adjudicated upon.

  {Harbhajan Singh Sethi v. Union of India, 1987 3 ATC}

But it is possible only if earlier charges were simply withdrawn, not dropped.

- According to Lexocom Webster's Dictionary, the meaning of the word 'dropped' is 'to come to end, cease, 'withdrawal' is 'to take back, to recall'. Hence, there is no infirmity in the issue of a fresh charge sheet till the earlier one was simply withdrawn.

Withdrawal or Dropping of Charges

- It is always open to the disciplinary authority to withdraw a reference for a disciplinary action or to drop the charges.

  The charged officer has no right to insist that the proceedings initiated against him must be carried to their logical conclusion.

{S.S.Pandey vs State of M.P. AIR 1961 M.P. 293; State of Punjab vs Parsa Singh, AIR 1967 Punjab 238}

धन्यवाद

THANK YOU

जय हिन्द