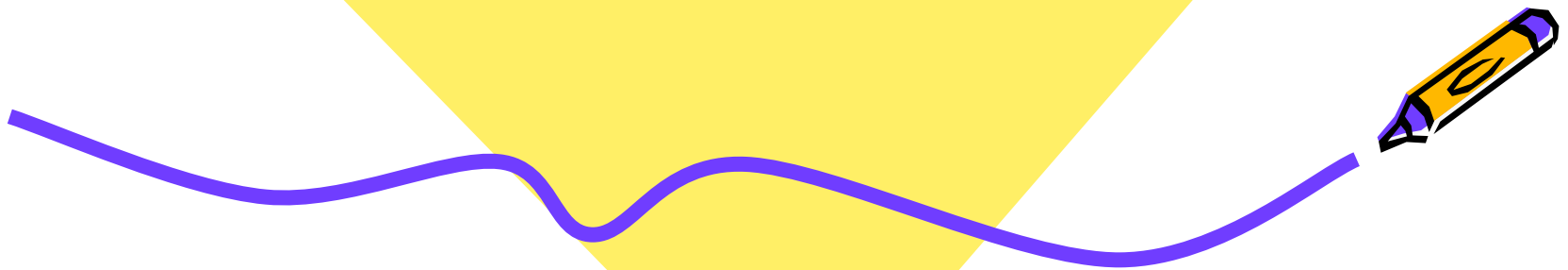




Assam Civil Services
Discipline & Appeal Rules:
Proceedings



STEPS

Preliminary Enquiry (Not mandatory)



- A Preliminary enquiry is usually held to determine whether a prima-facie case exists for a formal departmental enquiry.
- For framing charges properly and before actually making a charge sheet, the authorities can carry out a preliminary investigation or a fact finding enquiry.



Framing of Charges: Show Cause Notice



• A charge sheet is a formal notice containing details of allegations/accusations made against an employee of specific acts of misconduct/misdemeanour.

• It indicates to the accused employee precisely and concisely the subject matter on which he has been alleged and charged.

• It makes the employee aware of the extent, nature and gravity of the misconduct alleged





- Provides an opportunity to the employee to take an appropriate decision as to whether he could defend himself or could accept the guilt as mentioned in the charge sheet
- The charge sheet is the basic document on which the foundation of the departmental enquiry is built.
- Hence care should be taken to frame the charge sheet as omissions may result in an incurable irregularity.



Points to Remember

- Particulars of the statement of facts constituting the charge
- Reference to the paragraph/ subparagraph of the service rules within which the misconduct falls
- Relevant particulars of the previous record of the concerned employee in cases where such record is relied upon
- Time within which the delinquent is required to reply to the charge sheet
- Compliance with such other formalities which the service rules specially provide in this regard.



Case Study



Case Study 1.

Shri Navakar Medhi is working as a LDA in the Directorate of A. He is very irregular in office and frequently absents himself without intimation/approval of the authority. For this reason, he has received a number of warnings vide letters

- 1) No..... dated 20th April 2006,
- 2) No, dated 18th December 2006,
- 3) No dated 17th March 2007,
- 4) No dated 18th September 2007 and
- 5) No dated 19th January 2008.

On 25th March 2008, he was asked to remain in office after office hours as there was some urgent work related to the ongoing budget session. However, Mr. Medhi left office at 5 PM despite receiving the orders.

From 10th of April 2008 to 28th of April 2008 Shri Medhi was absent without any information. The matter was brought to the notice of the disciplinary authority who ordered for disciplinary proceedings to be drawn.



Case Study 2

The Directorate of B had a total of ten drivers on their rolls. However, in the year 2004 it was found that the Directorate had only three functional vehicles and therefore most of the drivers were without any work. Moreover, some of the drivers who had no allotted vehicles frequently absented themselves from office and at some points of time, no driver could be found in the office. The matter was discussed with Finance department and it was decided to relocate two drivers to the Directorate of C where there was a shortage of drivers.

On the basis of the discussions with Finance Department, an office order was issued (File No DoT/2004/21) directing two drivers - 1. Shri I. Ali and 2. Shri. M. Boro to report to the Directorate of C wef 1st April 2004. While Shri M. Boro complied with the office order, Shri I. Ali did not.

Moreover, Shri I. Ali also did not attend the office of the Directorate of B and remained absent for a month. He also tried to use political influence by making a local politician request the Director through telephone to reconsider the decision.

On 10th of May 2004, the Director decided to initiate disciplinary proceedings against Shri I. Ali.



Case Study 3

Mukul Basumatary, a peon in the office of Directorate of C was attached to the establishment branch of the office. However, he is very irregular and is never to be found when required. After signing the attendance register, he does the vanishing act and resurfaces only during the closing hours. Sometimes, he smells of liquor and gets very aggressive if questioned.

On 24th of May 2006, Shri Basumatary came drunk to office at 11.30 AM and picked up a fight with Shri M.Bora, LDA of the establishment section. He created a scene by shouting at the top of his voice, gesticulating obscenely and destroyed the ambience of the office atmosphere. He was let off by the disciplinary authority with a warning vide letter No DHS/2000/65 dated 28th May 2006. He was warned that unless he mended his ways, strict action would be taken against him.

However, Shri Basumatary soon reverted to his old habit and started disappearing from office. No one took any truck with him and things continued till one day he was caught gambling and drinking during office hours (15th July 2006). The matter was brought to the notice of the disciplinary authority who ordered that disciplinary proceedings be drawn up against Shri Basumatary.





- **Communication of Charges:**

Personal service

Registered Post

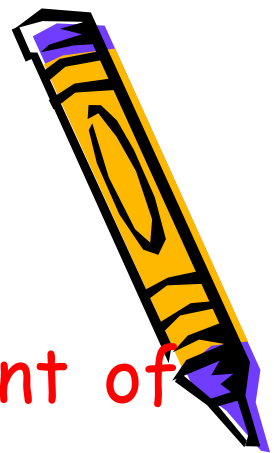
Publish a notice in the newspapers.



- Inspection of records
- Initiation of enquiry process: Appointment of IO & PO

The Inquiry Officer is only an agent of the Disciplinary authority for collecting facts and materials under quasi-judicial powers assigned to him.

The Presenting Officer presents the case on behalf of the organization and assist the enquiry officer in the disciplinary proceedings.

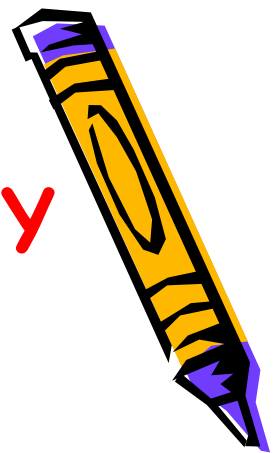




Enquiry Process

PROCEDURE DURING ENQUIRY

- Departmental enquiries are quasi judicial
- Enquiry Officer is expected to exercise his powers in a judicial spirit
- Follow an orderly course of procedure.
- Enquiry should be a faithful, systematic, honest and accurate record of all that has been said and admitted before the Enquiry Officer.



Persons to be present

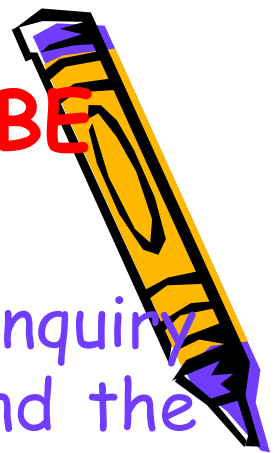


- The enquiry into the charges against an employee should be conducted in his presence.
- No person should be allowed to be present as a spectator.
- The witnesses of both sides should be called in one by one and separately as and when considered necessary.
- When the evidence of a witness in support of the charge is being recorded before the Enquiry Officer, other witnesses should not be permitted to be present.



PRELIMINARY FORMALITIES TO BE OBSERVED

- At the commencement of the enquiry, the Enquiry Officer should record the date and time and the names of persons present.
- He should also formally ask the charge sheeted employee his name, designation and department, to establish his identity.
- The Enquiry Officer should then read out the charge sheet to the employee and also his written explanation, if any. He should take both documents on record and ask the employee whether he understands the meaning of the charges and the purpose for which the enquiry is being held, and further whether he admits the charges or not.



- The entire conversation should be recorded in the proceedings. After reading out the charges and recording the employees reply, the Enquiry Officer should explain to all present the procedure he would be adopting and record this.
- Where the employee admits the charges, the admission of the charges in toto should be recorded. In such cases it may not be necessary to proceed further with the enquiry.
- But, if the misconduct is serious enough to warrant discharge / dismissal, it is advisable to conduct a formal enquiry, notwithstanding the admission of the charge.



Enquiry Process

1. Presentation of Oral and Documentary Evidence

- The Enquiry Officer shall, consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges.
- Normally, since the management has framed the allegations, they should also lead evidence first.
- The Presenting Officer will initiate proceedings by either producing documentary evidences or witnesses or both.
- The Presenting Officer and the charge sheeted employee or his representative may be permitted to make a statement or submit their points in writing.
- All statements made in this connection by either the parties or the witnesses, should be recorded properly. Documents submitted should be connected and marked as " exhibits " with serial numbering.



2. EXAMINATION - IN - CHIEF, CROSS - EXAMINATION & RE-EXAMINATION

- The examination of a witness by the party that produces him is called his examination-in-chief.
- The examination-in-chief is meant for the purpose of eliciting from the witnesses the material facts within his knowledge which tend to prove the case of the party calling him.
- The examination of a witness by the adverse party is called his cross-examination.
- Cross-examination, on the other hand, is necessary for the purpose of testing the correctness and completeness of the statement of the witness.
- If the charge-sheeted employee does not wish to cross-examine a witness, the Enquiry Officer should record a note to that effect.



- The examination of a witness subsequent to the cross-examination by the party who called him, is called re-examination.
- Witnesses are first examined-in-chief, then cross-examined and then re-examined.
- The examination and cross-examination must relate to relevant facts, although the cross-examination need not be confined to the facts to which the witnesses testified in his examination-in-chief.
- The re-examination should be directed to the explanation of matters referred to in cross-examination; and if any new matter is introduced in the re-examination, the adverse party may further cross-examine upon that matter.



- When the examination of all the witnesses is over, the Enquiry Officer may examine the charge-sheeted employee. The Enquiry Officer can at any stage of the enquiry ask questions which he considers relevant, to the delinquent or his representative, the Presenting Officer and the witnesses on both sides for removing his doubts.
- At the concluding stage of the enquiry, and after both sides have completed their presentation of witnesses and documents, the normal procedure adopted by the Enquiry Officer is to call the parties to argue their respective cases, if they so desire.
- However, presentation of arguments is not a legal obligation. Nor is it a requirement under Principles of Natural Justice. It is only a procedural formality, practiced with a view to afford justice and fair opportunity.



RECORDINGS OF PROCEEDINGS

- The Proceedings should be recorded verbatim as far as possible.
- The date and time on which the proceedings took place and the adjournments granted should be mentioned in the proceedings.
- The signature of the persons present at the enquiry should be obtained.
- Where the statements are recorded in a language other than the language understood by the charge-sheeted employee, these should be translated to him in the language understood by him.
- As far as possible, the statements in the enquiry should be signed by the parties and by the Enquiry Officer, although failure to do so is not an irregularity.

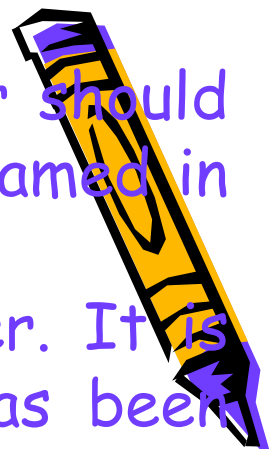


FINDINGS OF THE ENQUIRY & REPORT

- As far as possible the Enquiry Officer should submit a detailed report in which he should discuss the charge(s) against the employees, the evidence in support of the charge, the defence of the charged employee and other relevant matters.
- He should record his findings in respect of each charge, specifically indicating whether according to his judgement, such charge has been established or not.
- The findings should be in the form of a self contained document containing briefly the accusation, the substance of the evidence adduced by both sides during the enquiry, and the conclusions of the Enquiry Officer.



- In recording his findings, the Enquiry Officer should be careful to deal only with the charges as framed in the charge sheet.
- He should not consider any extraneous matter. It is his duty to consider all the material that has been brought on record but not such facts as are not on record. He cannot give his findings on an assumption of fact and circumstances not supported by an evidence on record.
- The Enquiry Officer should consider the evidence in an unbiased and reasonable manner. His findings should clearly indicate that he has applied his mind to the evidence recorded and that he has not come to a mechanical conclusion.
- His findings should also clearly indicate whether he consider the charge sheeted employee guilty or not and if so, the reasons therefore.



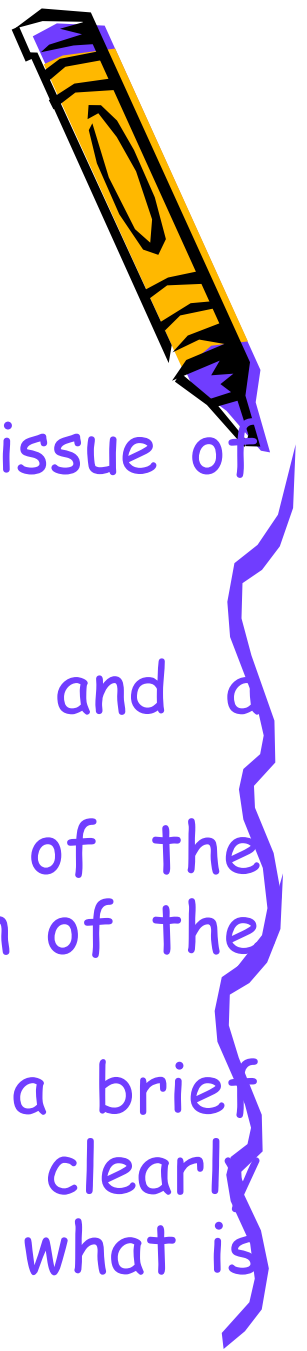
The REPORT



- Since the findings of the Enquiry Officer may lead to imposition of punishment, it is his duty to record clearly and precisely his conclusions and his reasons for arriving at those conclusions.
- Ordinarily, he is therefore, not expected to pronounce the penalty. Indeed, it is not the domain of the Enquiry Officer to recommend punishment since it is the disciplinary authority that alone is competent to decide what penalty should be imposed.
- The report of the Enquiry Officer should be simple, unambiguous and as concise as the nature of the case permits.
- The report should be temperately worded and must avoid unnecessary criticism. The paragraphs should be serially numbered to facilitate subsequent reference, if necessary.



The REPORT



1. Short recital of the case:

- A narration of the incidents leading to the issue of the charge sheet,
- The identity of the delinquent,
- The appointment of the Enquiry Officer and a reference to the order
- The important dates - of commencement of the enquiry, the sittings held and the conclusion of the proceedings,
- the representations of the parties, and a brief statement of the respective cases, clearly distinguishing between what is admitted and what is not.



2. An analysis of the evidence:

The evidence adduced and the arguments advanced before the Enquiry Officer should be carefully analysed. The analysis will testify that the Enquiry Officer has critically examined the evidence and applied his mind.

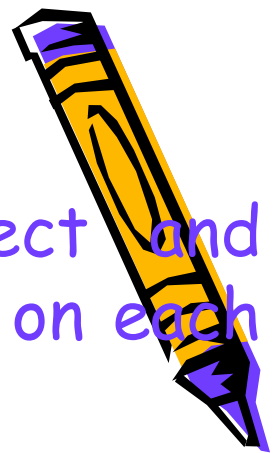
3. Findings on each charge :

Each charge should then be dealt with and clear findings given with reasons. The recording of reasons in support of a decision taken by a quasi-judicial authority in an enquiry is obligatory. This ensures that the decision is reached according to law and is not a result of arbitrariness or expediency.



4. Conclusion:

The conclusion should be brief and direct and indicate the decision of the Enquiry Officer on each charge against the delinquent.



5. Proposed punishment - where provision exists:

In cases where the Enquiry Officer is authorised under the rules to decide and pronounce the penalty, he must do so; the enquiry would otherwise be incomplete. Further, each charge held to be proved should be provided separate punishment so that it is clear what the punishments are for.



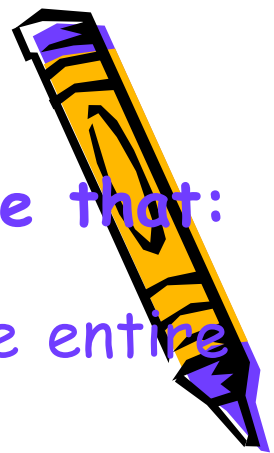
- Once the Enquiry Officer has signed his report, he becomes functus officio. He ceases to have any further force or authority. Consequently he cannot then make any change in his report nor modify his findings.
- The scope and power of an authority merely asked to enquire into the charges is rather limited. The Disciplinary Authority, where is it not the enquiry authority can, therefore, accept, modify or even reject the findings of the Enquiry Officer.
- If the Disciplinary Authority disagrees with the findings of the enquiry authority on any charge, it shall record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.
- The Disciplinary Authority may also remit the case to the enquiry authority for fresh or further enquiry. Such fresh inquiries are usually ordered when the Disciplinary Authority discovers some technical defects in the report or there are other compelling reasons.



Final order : Speaking Order

While making the order, mention should be made that:

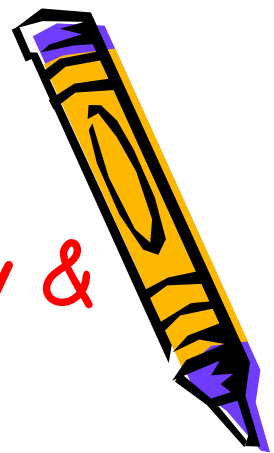
- ✓ He had gone through the findings as well as the entire records of the enquiry
- ✓ His concurrence with the views of the enquiry officer that the charges have been proved & established against the delinquent employee
- ✓ His disagreement, if any, with the findings of the enquiry officer, reasons for the same, recording his own findings, mentioning the charges which are proved on the basis of his findings
- ✓ That he has considered the circumstances of the case, the gravity of the misconduct & the past record of the employee and the appropriate punishment, which in his opinion, would meet the ends of justice.



• Communication of orders

- A copy of the report of the enquiry
- A copy of the findings of the Disciplinary Authority
- A copy of the advice, if any given by the APSC
- Where the Disciplinary authority has not accepted the advice of the commission, a brief statement of the reasons for such non-compliance.





- Consideration of the Appeal, if any & its disposal

A government servant has been given the right to move to a higher authority against an order of punishment passed against him.

Disciplinary Action begins with the issue of a charge sheet and ends with the disposal of an Appeal.

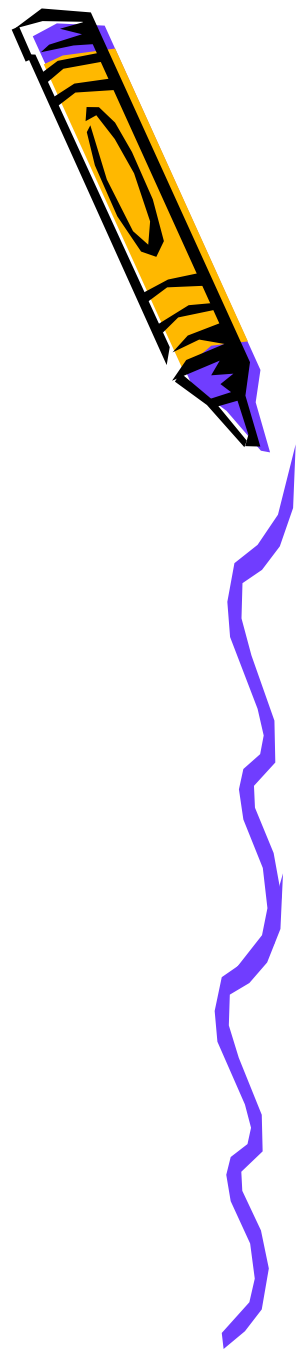


Let us Discuss: Proceedings

1. " where the employee admits the charges in toto, it is not necessary to proceed further with the enquiry " .
2. "Once evidence is recorded, it is not necessary for the Enquiry Officer to record any findings".
3. Once the enquiry officer submits his report, he does not have any further force or authority in the matter.
4. The findings of the Enquiry Officer are binding on the Disciplinary Authority.

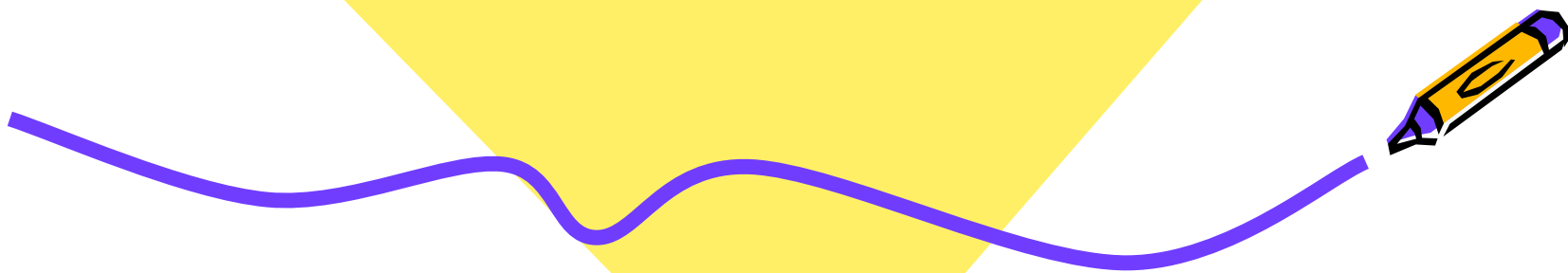


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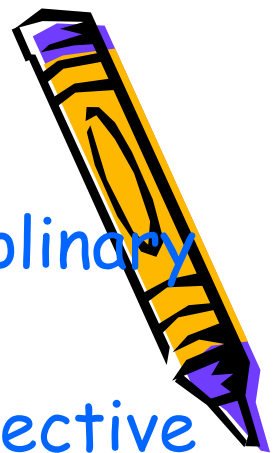


Suspension



Let us Discuss: Suspension

1. Suspension is a punishment under the Disciplinary Rules.
2. Suspension can be ordered with retrospective effect.
3. During the period of suspension, Government is bound to pay a subsistence allowance to the suspended employee.
4. Headquarter leave permission is not necessary for an employee under suspension if he wishes to travel outside his HQ
5. State some grounds for suspension
6. What is the time period for drafting charges against a suspended employee?



Suspension

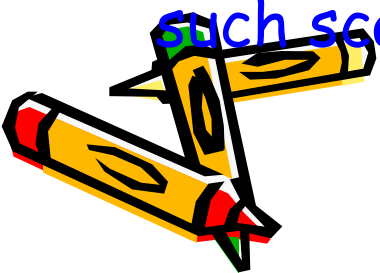
- Suspension means depriving an employee of his office and restricting him from performing his duties and functions temporarily
- It can be either an administrative decision or an act of quasi judicial nature
- Deprivation of duties & powers does not reduce the rank of a suspended employee
- He is restrained from taking up employment elsewhere during this period for which he is paid a subsistence allowance
- During this period of suspension, he is subjected to the same discipline, penalty and administration by which he was governed before suspension




Grounds/Conditions for suspension

A government servant may be placed under suspension where continuance in office of the Government servant will

- (i) prejudice the investigation, trial or any inquiry (e.g. apprehended tampering with witnesses or documents);
- (ii) is likely to seriously subvert discipline in the office in which the public servant is working;
- (iii) against the wider public interest such as there is public scandal and it is necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals, particularly corruption;





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

(v) Where he has engaged himself in activities prejudicial to the interests of the security of the state.

A government servant shall be deemed to have been suspended

(i) If he is detained in custody for a period exceeding 48 hours

(ii) If he is sentenced to a term of imprisonment exceeding 48 hours



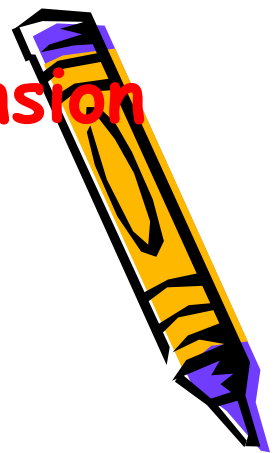
Idea behind placing an officer under suspension is to safeguard against:



- Manipulation of records
- Intimidation to witnesses
- Continuance in service likely to subvert discipline in office
- Prevent further loss to government
- Embarrassment to the government in the public eye.
- Preliminary enquiry reveals that a prime-facie case exists which justifies his prosecution/DP and where proceedings are likely to end in his conviction/dismissal/removal or compulsory retirement from service



Offences/misdemeanors where suspension may be desirable



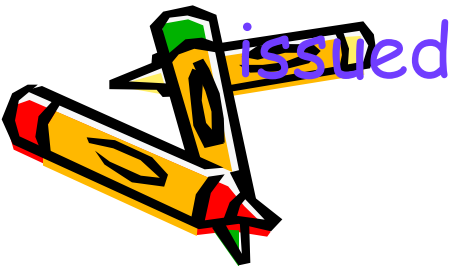
- Any offence or conduct involving moral turpitude
- Corruption, embezzlement or misappropriation of government money
- Possession of disproportionate assets
- Misuse of official power
- Serious negligence and dereliction of duty
- Desertion of duty
- Refusal or deliberate failure to carry out written orders of superior officers.



Authorities empowered to suspend



- Appointing authority
- Authority to which he is subordinate
- Authority empowered by the Governor
- Where an authority other than the appointing authority makes suspension, such authority shall seek approval of the appointing authority, explaining the circumstances under which the order was issued



Principles & Procedures regarding suspension

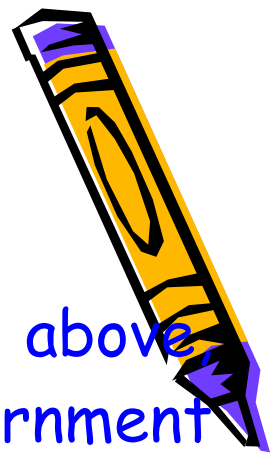


- Suspension should be resorted to only in cases where a major punishment is likely to be imposed
- Charges and statement of allegation should be served within three months from the date of suspension
- Sometimes charges cannot be prepared within 3 months but continued suspension is considered necessary in public interest. In such cases Personnel department should be moved for advice as to whether any extension of the period of suspension should be permitted or not.



BUT.....

In spite of the instructions referred to above instances have come to notice in which Government servants continued to be under suspension for unduly long periods. Such unduly long suspension while putting the employee concerned to undue hardship, involves payment of subsistence allowance without the employee performing any useful service to the Government. It is, therefore impressed on all the authorities concerned that they should scrupulously observe the time limits laid down and review the cases of suspension to see whether continued suspension in all cases is really necessary.



Subsistence Allowance

Government servant under suspension is entitled to a subsistence allowance equal to the leave salary which he would have drawn, had he been on leave on half average pay and in addition dearness allowance based on such leave salary.



Right to Appeal




✓ Where a Government servant is placed under suspension, he has a right of appeal against the order of suspension.

✓ Therefore, a Government servant who is placed under suspension should generally know the reasons leading to his suspension so that he may be able to make an appeal against it.

✓ Where a Government servant is placed under suspension on the ground that a disciplinary proceeding against him is pending or a case against him in respect of any criminal offence is under investigation, inquiry or trial, the order placing him under suspension would itself contain a mention in this regard and he would, therefore, be aware of the reasons leading to his suspension.





✓ Where a Government servant is placed under suspension on the ground of "contemplated" disciplinary proceeding, the existing instructions provide that every effort would be made to finalise the charges within three months of the date of suspension and the reasons for suspension should be communicated to the Government servant concerned immediately.

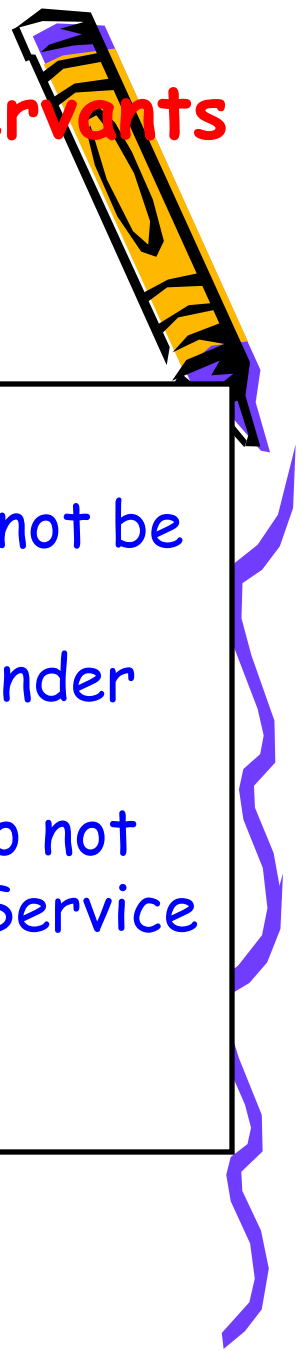
✓ The time-limit for SUBMISSION OF APPEAL is forty five days and this should be counted from the date on which the reasons for suspension are communicated.

This however does not apply to cases where a Government servant has engaged himself in activities prejudicial to the interests of the security of the State and therefore placed under suspension.



Forwarding of applications of Govt Servants involved in disciplinary proceedings

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



Resignation applications of Govt Servants under Suspension



✓ Normally, as Government servants are placed under suspension only in cases of grave delinquency, it would not be correct to accept a resignation from a Government servant under suspension.

✓ However, the competent authority should examine, whether it would be in the public interest to accept the resignation.

Exceptions to this rule:

✓ where the alleged offences do not involve moral turpitude or where the quantum of evidence against the accused Government servant is not strong enough or where the departmental proceedings are likely to be so protracted that it would be cheaper to the public exchequer to accept the resignation



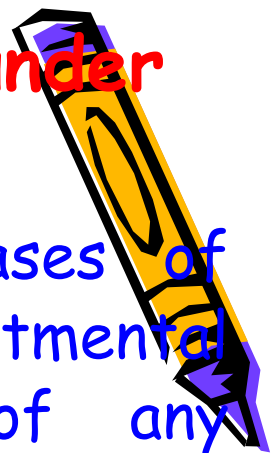
Promotion of Government Servants under Suspension

1. At the time of consideration of the cases of Government servants for promotion, the Departmental Promotion Committee must be informed of any Suspension cases, DP cases etc of Government servant in the consideration zone for promotion

2. The Departmental Promotion Committee shall assess the suitability of the said Government servants along with other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending.

3. The assessment of the DPC will be kept in a sealed cover.

4. The Sealed Cover is not to be opened till the termination of the disciplinary case/criminal prosecution

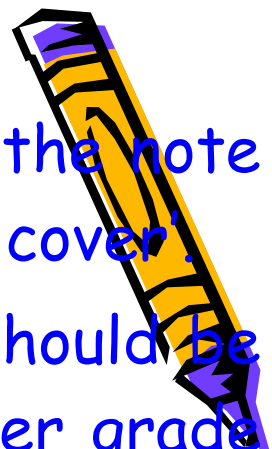


5. The proceedings of the DPC need only contain the note 'The findings are contained in the attached sealed cover'.

6. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

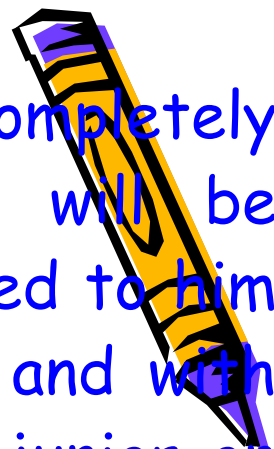
7. The same procedure outlined will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded.

8. On the conclusion of the disciplinary case/criminal prosecution the sealed cover or covers shall be opened.



9. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position.

10. Regarding whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion and if so to what extent, will be decided by the appointing authority. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. For eg, there may be cases where the proceedings were delayed at the instance of the employee or the clearance in the disciplinary proceedings is with benefit of doubt etc



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



Termination of suspension



- On retirement, death
- Dismissal, Removal of service
- Compulsory retirement
- After the period specified, if any, in the order of suspension
- After the conclusion of the court proceedings
- After the departmental proceedings are completed



Thank You

