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Dr. S.K. Sarkar

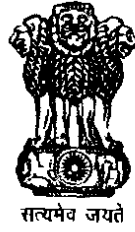
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DEPARTMENT OF PERSONNEL & TRAINING
MINISTRY OF PERSONNEL
PUBLIC GRIEVANCES AND PENSIONS
NORTH BLOCK, NEW DELHI-11001
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Dated the 19th May, 2010

D.O. No. 372/3/2007-AVD-III

Dear Sir,

While considering the various recommendations contained in the 2nd Administrative Reforms Commission's 4th Report titled "Ethics in Governance, the Core Group on Administrative Reforms (CGAR) suggested that "disciplinary action should be completed within one year time frame, and that the DOPT will suitably put up a note on Disciplinary Proceedings on how to reduce the time frame to one year". Pursuant to this, on May 12, 2010, the Government has set up a Committee of Experts under the chairmanship of Shri P.C. Hota, former Chairman, UPSC with Shri Arvind Varna, former Secretary(Personnel) and Shri P. Shankar, former Central Vigilance Commissioner as its Members, to examine and suggest measures to expedite the process involved in Disciplinary/Vigilance Proceedings.

2. In this regard, I am to request you to kindly furnish your suggestions/comments, if any, latest by 5th June, 2010 so that the same could be consolidated by us, and submitted for consideration of the Committee of Experts. A background note is annexed for consideration. You may send your response at the following address:-

Shri V.K. Velukutty,
Deputy Secretary(V-III), DOPT,
Room No. 10-B/II, North Block
New Delhi-110001.
E-mail : ykvkutty@nic.in

With regards,

Yours sincerely,


(Dr. S.K. Sarkar)

To

✓ (1) All Cadre Controlling Authorities/Ministries/Departments.

(2) Chief Secretaries of State Govts./UTs.

Background Note on need for Review of Disciplinary Proceedings.

The Government has set up a Committee of Experts on May 12, 2010 to examine and suggest measures to expedite the process involved in Disciplinary/Vigilance Proceedings.

Disciplinary proceedings, time frame and reality

2.. The detailed procedure for imposing penalties has been laid down in CCA(CSS) Rule, 1965 in the case of Central Government employees and in the All India Services (Discipline & Appeal) Rules, 1969 in the case of All India Services. These procedures do not, however, prescribe any time limit for completion of the process for imposing penalty.

3. Nevertheless, the DOPT have prescribed a time frame of 14 months for imposing such penalties as indicated below :

- a) Issue of Charge Sheet where CVC is required to be consulted - 3 months.
- b) Issue of Charge Sheet where CVC is not required to be consulted - 2 months.
- c) Appointment of IO/PO - Immediately after receipt of Written Statement of Defence.
- d) Completion of Inquiry and submission of Report by the Inquiry Officer - 6 months.
- e) Issue of final orders where UPSC is not required to be consulted - 2 months.
- f) Issue of final orders where UPSC is to be consulted - 1 month from the date of receipt of advice.

4. In contrast, the CVC manual prescribed a realistic time schedule of nearly 25 months for completion of the Disciplinary Proceedings (DP). In January 2009 the CVC has also suggested that in the normal circumstances, the conclusion of disciplinary proceedings should be reached within a time frame of two years from the date of inception to the stage of issuance of final orders. This time frame does not exactly take into account the time to be taken by the UPSC in rendering its advice on a reference made to it.

5. In practice, the time taken for completion of disciplinary proceedings is more than what has been prescribed. In its 4th Report on Ethics in Governance, the Second ARC, commented adversely on the enormous time taken in concluding the DP. It has also quoted a study conducted by IIPA whose findings are:

- In 116 cases studied, the average time taken between reference to CVC for the "first stage advice" and receipt of the advice in cases studied was 170 days (three cases apparently involved imposition of minor penalty).
- In 234 cases involving proceedings for a major penalty the average time taken between appointment of the Inquiry Officer and completion of inquiry was 584 days.
- In 56 cases the average time taken from receipt of the inquiry report to sending the case to the CVC for "second stage advice" was 288 days.
- In 33 cases the average time taken between the date of occurrence of misconduct and sending the cases to the CVC for "first stage advice" was 1284 days.
- Analysis of certain completed cases revealed the following break-up of time taken by various agencies :

Administrative Department	-	69%
Inquiry Officer	-	17%
CVC	-	9%
UPSC	-	5%

Areas where time reduction is possible

6. In consultation with CVC/UPSC, the DOPT has identified some areas where reduction of time is possible, which are discussed below :

- The present requirement of consultations with the CVC could be reduced to a Single-Stage Consultation. The single-stage consultation with CVC could be at the initial stage itself, where the DA after conducting a preliminary inquiry at his level or after collecting the facts of the case should approach the CVC. Considering the preliminary inquiry report or the facts of the case before it, as may have been submitted by the DA, the CVC should be in a position to firm up its advice to the DA in a holistic manner, i.e., whether the particular case needs to be pursued or dropped by simply issuing a recordable warning, or the DA should go ahead with the disciplinary proceedings for imposing a minor penalty or major penalty. This will ensure that the Government servant concerned is not unnecessarily victimized by the Department by initiating a disciplinary proceeding even in a weak case and simultaneously, guiding the DA appropriately from vigilance angle. Thereafter, wherever, the DA wants to disagree with the advice of CVC, on the basis of the outcome of Inquiry conducted by him, only in such cases he should again consult the CVC for reconsideration of its earlier advice.
- At present there are four types of penalties causing reduction in pay one way or the other, i.e., 2 under the classification of "Minor Penalties" and 2 under the classification of "Major Penalties". Out of these, one penalty is "Withholding of increment of pay". If the intention of these four penalties is to cause pecuniary loss to the charged officer, as a punishment, the purpose can be served by imposing the existing penalty of "Withholding of increment" alone under the classification of "Minor Penalties". There appears to be no

need for retaining the other three forms of penalty causing reduction in pay (i.e. one under "Minor Penalties" and 2 under "Major Penalties"). In such a situation, if the DA feels that there is a need for imposing a harsher penalty on the charged officer, even under the classification of "Minor Penalties", then he may consider imposing the penalty of "Withholding of increments" for more number of years in a graded form, depending on the gravity of the charges. At present there is no limit prescribed for the penalty of "Withholding of increments". It is suggested that if the other three forms of penalty of causing reduction in pay are to be deleted, then we may consider fixing the Penalty of "Withholding of increments" for a maximum period of 3 years. There is no need for any Penalty like "Withholding of increments with cumulative effect."

- Compulsory Retirement is a penalty under the classification of "Major Penalties". Article 311 of the Constitution states about the need for consultation with UPSC only in the case of demotion, removal and dismissal of civil servants. There appears to be no need for retaining "Compulsory Retirement" as a form of penalty. This is so because, a Government servant who is compulsorily retired as a major penalty, will get all his retirement benefits. Therefore, it has very little or no deterrent effect on the charged officer and also not serving the original purpose of awarding punishment for a major misconduct. In other words, it is as if Government is sending home a disgraced Government servant almost in an honourable way even while awarding him major punishment. In this way, such Government servants may feel a sense of comfort and security even while indulging in wrong doings with malafide intention because they know that even if they are Compulsorily Retired from service, they would get full pensionary benefits. It is, therefore, felt it should be deleted from the CCA(CCS) Rule because the penalty of "Compulsory Retirement" does not actually work as a deterrent. If the DA considers that a major penalty has to be imposed on the charged officer for a major misconduct, then he should take recourse to imposing penalty of Demotion or Removal or Dismissal from service. This would also give out a clear message to all the Government servants the severe consequence of their wrong doings with deliberate intention. As for dealing with the inefficient employees, there is already a provision under FR 56(j) vide which the central Government can retire such employees compulsorily.
- The present need for consultation with UPSC in case of imposition of Minor Penalty can be done away with by suitably amending the Union Public Service Commission(Exemption from Consultation) Regulations, 1958.
- The Penalties mentioned under Rule 11 of CCS(CCA) Rules, 1965 should be reclassified as under :

Minor Penalties -

- (i) Censure;
- (ii) Withholding of his promotion;
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders; and
- (iv) Withholding of increment of pay upto a period maximum of five years.

Note : As has been mentioned in para 13(e), the UPSC is not in favour of altering the existing list of penalties. However, the DOPT's view is that in order to ensure equity of justice in all disciplinary cases in the Central Government, uniformly, it is necessary to prescribe certain yardstick in the matter of awarding penalties by the DA - rather than giving full discretion to the DA in this regard in the garb of application of mind. This is so because experience show that different DAs have imposed in the past different types of punishment for the same misconduct or offence - e.g. while one DA in one Department had imposed Major penalty on the accused found guilty in a forged LTC claim, the DA in another had dropped the charges against the accused found guilty of a forged TA claim on the ground that the charged officer had refunded the unutilized amount of TA advance. In order to avoid such aberrations, deliberately caused by some DAs, it is felt necessary that at least in the case of minor penalty of stoppage of increments, we may prescribe the following limitations:

"Stoppage of increments

- (a) upto a maximum of one year on charges of insubordination;*
- (b) upto two years on charges of lack of devotion to duty; and*
- (c) upto three years on charges of inability to maintain absolute integrity but not causing pecuniary loss to public exchequer and embarrassment to Government."*

Major Penalties -

- (v) Demotion to a lower grade with or without cumulative effect.
- (vi) Removal from service which shall not be a disqualification for future employment under the Government;
- (vii) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government:

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

- The Inquiry Officers are usually the serving Government officers or the retired Government servants. In the case of serving officers, they have to do the job as additional work. Some of them being very busy with their own routine work, may not be in apposition to devote adequate time for completing the assignment on time. At the same time, there are some other officers who are comparatively not all that busy and willing to take up such challenging assignments. So, also is the case in respect of Defence Assistants. If the DA receives adequate attention from the IO and the Defence Assistant, it is possible to reduce the present time lag to some extent by fast tracking the inquiry. However, the present instructions of DOPT restricts the number of cases which can be taken up by a Government servant as an Inquiry Officer. In the case of a serving officer, he can take up only two cases at a time and a total of 10 cases in a year; and a retired officer can take up only 4 cases at a time and 20 cases in a year. In the case of Defence Assistant the Government servant can take up such assignments only upto 4 at a given time. Similarly, in the case of a retired Government servant, he cannot act as Defence Assistant in more than 7 cases at a time. If some one is willing to do more work in this area, this should be encouraged, and consequently the disciplinary cases could be finalized expeditiously.
- As per DOPT's OM No.142/20/2008-AVD.I dated 27.7.2009 regarding payment of honorarium for completion of a departmental inquiry, an Inquiry Officer (who is a serving Government servant) gets Rs.3000/- ; a Presenting Officer (who is a serving Govt. Servant) gets Rs.1500/- and a Retired Govt. servant functioning as Inquiry Officer gets Rs.9750/- (plus Rs.1500/- for every additional charged officer). Except the above standard rate, there is no other special incentive for completion of the inquiry expeditiously. In order to encourage the above officers to complete the inquiry within a time frame, it is suggested that those who complete their job on time, may be considered for grant of additional payment in the form of incentive , i.e., up to an amount equivalent to the above rates in each case.
- The Disciplinary Authority normally begins the search for a suitable officer for appointment as Inquiry Officer in a particular case only after a specific case has been brought to his notice. The scouting for such officer and his subsequent appointment as Inquiry Officer also involves a substantial amount of time. If a system is built up, whereby the information about availability of a willing officer for taking up the assignment of inquiries is known ex ante, by maintaining a centralized data base which is accessible to the all the Disciplinary Authorities, the delay in getting suitable officer may be minimized.
- Some of the accused employees deliberately delay the inquiry proceedings by seeking extension of time/adjournment of hearings quoting various reasons including on medical grounds. At present, there are no restrictions on grant of the total number of such extensions/adjournments. The Government may consider putting

some restrictions on the number of extensions in this regard. The Inquiry Officer shall entertain requests for extension of time/adjudgments only in cases of unforeseen circumstances like hospitalization of the accused employee for indoor treatment in CGHS approved hospitals. Even in those cases also, number of extensions including adjournments should be normally limited to a maximum of three in total in the entire life of an inquiry and the interval between two extensions should not be more than one month.. Any request beyond this limit should be deemed to be a non-cooperative attitude of the accused employee, and the Inquiry Officer may feel free (unless there is no extraneous situation due to act of God) to conduct the inquiry ex-parte after informing the accused employee of the same.

- On the line of proceedings under Cr.P.C., where some of the accused persons are allowed to become prosecution witnesses for facilitating smooth and correct conclusion of the inquiry proceedings, whereby they become eligible for lesser punishment, we should also consider introducing a system of "plea bargaining" with the charged officer, under the CCA(CCS) Rules. Under such a system, if the charged officer accepts the charge, he can be punished by the DA straightaway, without entering into any lengthy disciplinary proceedings, thus saving a lot of financial resources to the public exchequer. In return of this help, Government should consider awarding to such persons only a lesser punishment than otherwise warranted . This way, many disciplinary cases can be concluded and disposed of expeditiously.
- To prevent repetitive and avoidable movement of files for higher approvals (as of the Minister in-charge), in the initial stage itself, clearance be sought for proceeding with the disciplinary action and appointment of X, Y or Z as Inquiry Officer in the event of the employee not admitting the charge(s) against him.
- The Union Public Service Commission (Exemption from Consultation) Regulations, 1958 should be suitably amended in order that the requirement of consultation with UPSC in case of imposing Minor Penalties, is done away with.
- The DA may consider issuing appropriate instructions to the Inquiry Officer about the need for conducting disciplinary inquiry on day-to-day basis in important cases of urgent nature involving substantial financial loss to the Government.
- At present, there is no regular practice of giving in the ACRs any special credit for the efforts made by the Inquiry Officers/Defence Assistants/Presenting Officers in completion of disciplinary proceedings. This is because in many cases, the Reporting Officers/Reviewing Officers may not be even informed of the correct

position. It is, therefore, suggested that an additional column should be provided in the existing ACR form for enabling the Reporting Officer to specifically make some remarks/comments on the efforts made by the officer reported upon, in helping the Government in completion of inquiry proceedings.

- The DOPT's instructions contained in OM No. 2/6/2009-Estt.(Pay.II) dated 25.2.2009 restricts the total deputation period upto 5 years. It may be mentioned that such instructions are meant for compliance by the normal Departments/Ministries of Government of India in order to maintain uniformity on deputation tenure. However, the work of CVC being a typically investigative in nature, there is need for continuity to a greater extent; otherwise it will adversely hamper the functioning of the Commission. It is, therefore, felt that essential the above restrictions on total tenure of deputation for general application, should not be made applicable to the Commission so that the Government's larger interest of carrying out its vigilance administration work by CVC is not adversely affected. In other words, the CVC should be exempted from the purview of DOPT's OM dated 25.2.2009 regarding ceiling of deputation period.
