

DISCIPLINARY PROCEEDINGS

LEGAL PROVISIONS

- Constitution of India
- Central Civil Services (Classification, Control and Appeal) Rules 1964
- Pondicherry Police Subordinate Services (Discipline & Appeal) Rules 1968

Constitution of India

- Article 310 : Tenure of office of civil servants
– Pleasure doctrine-President or Governor
- Article 310(1): Pleasure doctrine – President or Governor acting on the advise of the executive power
- Article 311(1): No dismissal or removal by an authority subordinate to that by which he was appointed
- Appointing Authority – The Authority by whom he was appointed.

➤ Article 311(2): Inserted by 42nd Amendment of the Constitution of India in 1976

No dismissal or removal or reduction in rank

(1). Except after an inquiry – Inquiry is mandatory

(2). He should be informed of the charges against him – records, registers – statements of witnesses

(3). Given a reasonable opportunity of being heard in respect of those charges

- to peruse the records and offer his explanation
- to cross examine the witnesses produced
- to produce records on his behalf

Reasonable opportunity

- (4). must be in conformity with the principles of natural justice
- opportunity to deny the charges
 - opportunity to defend himself by cross examining the witnesses
 - charges must be specific
 - charges must be intimated to him
 - must be given reasonable time and opportunity of meeting allegations

Penalty must be imposed on the basis of evidence adduced during the oral enquiry

It is a quasi judicial enquiry

Natural justice

Principles

1. Audi Alteram Partem

(Hear both sides – No person should be condemned unheard)

2. Nemo Judex in causa, sua potest

(No one can be a judge in his own cause
- Justice is not only be done but it should appear that it has been done).

DIFFERENCE

	Court	Departmental proceedings
Principles	Proof beyond reasonable doubt	Preponderance of probabilities
Onus of proof	On the prosecution	Charges need not be proved beyond reasonable doubt
Choice of punishments	Punishment under the law is codified	No such codification of misconduct and penalties

EXCEPTIONS TO ARTICLE 311(2) SECOND PROVISIO

No enquiry necessary

- (1) on conviction on a criminal charge involving moral turpitude
- (2) Impracticability – reasons to be recorded in writing.
- (3) For reasons of security – by the President or the Governor

INQUIRY AUTHORITY

Who should appoint the inquiry officer?

The inquiry officer has to be formally appointed by the Disciplinary Authority.

ROLE OF THE INQUIRY OFFICER

To

- (1). Record the evidence
- (2). Analyze the evidence
- (3). Record the findings
- (4). Submit the report to the Disciplinary Authority.

STAGES OF HEARING

Following are the stages of hearing:

- (1) Pre-hearing stage
- (2) Preliminary hearing stage
- (3) Regular hearing stage
- (4) Post hearing stage
- (5) At any stage during the enquiry
- (6) Tackling some unusual circumstances which may arise

PRE-HEARING STAGE

(A) ON RECEIPT OF APPOINTMENT ORDER

- (i). Check if the order has been signed and issued by the correct officer
- (ii). Check if the following are enclosed
 - (a) Annexures I to IV to the charge sheet
 - (b) Evidence that the charge sheet has been served on the charged officer
 - (c) Reply, if any, of the charged officer
 - (d) Appointment order of Presenting Officer

Study and get yourself acquainted with the nature of accusations and procedure to hold the inquiry

Plan the holding of Preliminary Inquiry

- (B). Acknowledge the appointment order
- (C). Make a daily order sheet maintaining receipt of appointment order
- (D). Fix a date for holding preliminary enquiry within 10 days and issue notice
- (E). Ascertain whether the presenting officer is a legal practitioner

(F). Issue of notice to the charged officer

(a). Inform that as per rules he can avail the services of a fellow government servant or retired government servant as Defence Assistant.

(G). If the presenting officer is a legal practitioner, the Defence Assistant can be a legal practitioner.

DEFENCE ASSISTANT

Rule 14 (8)(a) of CCS Rules 1964

- ✓ The charged officer can avail the assistance of a retired or serving govt. servant to assist him as Defence Assistant.
- ✓ If the Presenting Officer is a legal practitioner, the Defence Assistant may be a legal practitioner.
- ✓ Having regard to the circumstances of the case, the disciplinary authority may permit a legal practitioner as a defence assistant to assist the govt. servant.
- ✓ If the Presenting Officer is a legal advisor or law officer of the department, the charged officer can be given the assistance of a legal practitioner.
- ✓ If the case is complicate in nature involving substantial question of law and perusal of voluminous records, the charged officer is an illiterate then the disciplinary authority can allow the assistance of a legal practitioner.

- ✓ The retired govt. servant should not have assisted in the investigation of the case at any stage.
- ✓ The retired govt. servant should not act as Defence Assistant in more than seven cases at a time including the case in question.
- ✓ A certificate may be taken from him in this regard.
- ✓ The serving govt. servant shall not have more than five cases with him.
- ✓ He shall take permission of his controlling authority to absent himself from office to assist the charged officer during the inquiry.
- ✓ Inform the controlling officer of the Defence Assistant if the charged officer has finalized the name of the Defence Assistant.
- ✓ A suspended govt. employee can be a Defence Assistant.

DURING PRELIMINARY INQUIRY

- ❖ The Charged Officer and the Defence Assistant to be received warmly.
- ❖ The inquiry officer should not be rigid and rude to them.
- ❖ The inquiry should be conducted in a separate room.
- ❖ No other witness or investigating officer or outsider are allowed to sit during the inquiry.
- ❖ Ask the charged officer whether he has faith in you being the inquiring authority and clear the question of bias.

- ❖ Inquiry to stay when application is made against the inquiry officer's appointment on ground of bias.
- ❖ The application to be forwarded to the appointing authority for considering the application of the charged officer.
- ❖ Await the orders of the appointing authority in the above application.
- ❖ The inquiry to be stayed till the orders on the application of charged officer is received.

❖ In case the charged officer expresses confidence in you, proceed further and ask him

(a) Whether he has received the charge sheet

(b) whether he has understood the charges

(c) whether he admits the charges

❖ If the charged officer admits the charges

(a) The admission should be unqualified and unconditional

(b) It should be total acceptance of the guilt of the charges

Otherwise it is treated as denial.

- ❖ If some of the charges are admitted, they are deemed to have been proved.
- ❖ No further enquiry to be conducted in respect of those charges.
- ❖ The charges admitted should be recorded by the inquiry officer and signed by the charged officer.

SUPPLY OF DOCUMENTS

- Copies of all documents to be supplied to the charged officer.
- If the documents are bulky and voluminous, fix a time for inspection of the documents within five days and extendable by a maximum of five days.
- Fix a time schedule for submission of list of additional documents with the particulars of their custodian and their relevance in the inquiry.

- Ask for a list of defence witnesses within 10 days which is extendable by a maximum of 10 days.
- On receipt of the list of additional documents and the list of witnesses consider whether they are relevant or not to the case.
- If the documents asked for relevant, write to the custodian of documents to send it to you within a time limit.
- If the documents asked for are not relevant, the inquiry officer may refuse to call for the documents but the reasons to be recorded.

- The custodian of the documents if satisfied that their production would be against the public interest or security of the state, he may refuse to send those documents.
- Only the head of the department in whose custody those documents are kept alone can refuse to send those documents. The reasons for refusal to be recorded in writing.
- If the additional documents asked for are received they may be inspected by the charged official and the Presenting Officer.
- Where ever possible copies of those documents can be given to them.
- Daily order sheet should be prepared giving details of the action taken

SUMMONING OF WITNESSES

- ✓ The inquiry officer has no power to compel the attendance of witnesses or the production of documents.
- ✓ The witnesses cited by the prosecution as well as by the defence may therefore requested to appear before the inquiry officer on the date, time and place mentioned in the notice of request.

REGULAR HEARING

Listing of documents and prosecution witnesses/defence witnesses

Prosecution case

- ❖ Examination in chief by the presenting officer.
- ❖ Cross examination by the charged official or the defence assistant.
- ❖ Do not permit questions which are scandalous or which annoy the witness.
- ❖ Due respect should be given to the witness.
- ❖ Re-examination of prosecution witnesses by the presenting officer only on new points.
- ❖ Carefully watch and note the demeanor for witness.
- ❖ Seek clarifications from witness where ever necessary.
- ❖ If no questions are asked in cross examination it should be mentioned in the daily order sheet that the charged official did not avail the opportunity.
- ❖ Take undisputed documents on record and mark them as state exhibits, S1, S2 and so on.
- ❖ The signatures of the presenting officer to be obtained on the documents.
- ❖ Disputed documents has to be produced through a witness.
- ❖ Daily order sheet and supply of deposition statements
- ❖ Next date to be fixed.

BEFORE THE CLOSE OF THE PROSECUTION CASE

The presenting officer may ask for the production of additional documents and witnesses. If such a request is made, carefully consider

- (1) nature of evidence to be adduced.
- (2) purpose of evidence
- (3) why it was not included earlier at the time of drawing of the charge sheet.
- (4) is it vital to reach the truth
- (5) is it in the nature of filling in the gaps in the evidence already let in - If yes, do not allow.
- (6) hear views of the charged officer to the request made by the presenting officer.
- (7) whether introduction of new evidence will facilitate justice: If so permit and treat it like any other piece of evidence.
- (8) record reasons in daily order sheet for allowing new evidence.

AFTER CLOSURE OF THE PROSECUTION CASE

- ❖ Ask the charged officer whether he has got defence witnesses: If so issue summons to the defence witnesses.
- ❖ Allow the charged officer to conduct examination in chief of defence witnesses if any.
- ❖ Permit cross examination by the presenting officer and re-examination by the charged officer.
- ❖ Make daily order sheet for each day and obtain signature of the presenting officer and the charged officer/defence assistant.
- ❖ Give them the copy of daily order sheet.

AFTER THE CLOSE OF THE DEFENCE CASE

- ❖ Question the charged officer generally on the circumstances appearing against him.
- ❖ This requirement is mandatory if the charged officer has not examined himself as defence witness.

AFTER THE CLOSURE OF THE PROSECUTION AND THE DEFENCE CASE

- ❖ Arguments of both the prosecution as well as the defence may be heard
- ❖ If the arguments are oral they should be reduced in writing
- ❖ Submission of written brief by the presenting officer with copy to the charged officer.
- ❖ Submission of defence brief by the charged officer
- ❖ Submission of inquiry reports within six months of the appointment

DELAY IN THE CONDUCT OF THE DEPARTMENTAL PROCEEDINGS

- Appointment of inquiry officer
- Appointment of the presenting officer
- Appointing raw hands or un willing persons as inquiry officer or presenting officer
- Appointment of defence assistant
- Dilatory tactics such as transfer of PO, CO, EO etc.
- Non availability of witnesses – hostile witnesses,
- Complaint against the inquiry officer
- Simultaneous prosecution – difficulty in getting documents
- Lapses on the part of the inquiry officer –
 - malafide intention
 - does not know the procedure
 - indecision
 - engagements

- Delay in inspection of documents/supply of copies
 - Bulky documents
 - Not kept ready
 - irrelevant documents
 - late submission of lists
- Lapses on the part of the presenting officer
 - lack of knowledge
 - attitude
 - not serving summons to witnesses
- Adjournment
 - by inquiry officer
 - by the presenting officer
 - by the charged officer

- Dilatory tactics by the charged officer
 - avoiding to receive notices/summons
 - long list of documents
 - delay in inspection
 - medical certificates
 - written representations
 - request for change of inquiry officer/presenting officer

Advocate as defence assistant

- Delay in getting appointment of defence assistant

Parent department not releasing him

Engagements of the defence assistant

Difficulty in getting attendance of witnesses

for away

transferred

retired

present address not known

CAT cases and stay orders of courts

STANDARD OF PROOF

The standard of proof required in a departmental inquiry is lighter than in criminal case.

The degree of proof which is necessary to record an order of conviction is different from the degree of proof which is necessary to record the commission of delinquency

In a disciplinary proceeding the technicalities of criminal law cannot be invoked and strict mode of proof prescribed by the evidence act may not be applied with equal vigor, but even in disciplinary proceedings, the charges framed against the public servant must be held to be proved before any punishment can be imposed.

In a departmental inquiry the rules of natural justice are complied with if previous statements of witnesses are read over to them and marked during the departmental inquiry.

Hearsay evidence is admissible.

The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt.

Mere suspicion should not be allowed to take their place of proof even in domestic enquiry.

Charges cannot be sustained on mere conjectures in the absence of evidence.

REASONABLE DOUBT

- The term is very easy to understand but very difficult to define.
- It is the doubt which makes you hesitate as to the correctness of the conclusions you reach.

PREPONDERANCE

In favour of the party in whose favour there is preponderance of proof, although evidence may not be entirely free from doubt.

POINTS TO REMEMBER

- Degree of proof is by preponderance of probability.
- Indian Evidence Act is not applicable.
- Hearsay evidence, if it has logically probative value, is admissible.
- Departmental inquiry can be conducted on holidays and in camera.
- No need to examine all the witnesses.
- Witnesses not cited in the charge sheet can be examined at the request of the PO or at the instructions of the inquiry officer.
- Tape recorded evidence is admissible.
- Evidence of accomplice can be relied upon.

- Departmental inquiry while Police case is pending – no bar.
- Simultaneous prosecution as well as departmental inquiry can be conducted.
- Criminal prosecution after departmental action and vice versa.
- Departmental action can be taken after acquittal in a criminal case.
- Whether investigation report, preliminary report should be supplied - no
- Not allowing assistance of lawyer whether permissible in departmental inquiry – No violation of natural justice.

PRINCIPLES OF NATURAL JUSTICE

- Framing of specific charges with statement of allegations on which may be based with such particulars and articles as are necessary to give a reasonable opportunity to deny the charge and to establish innocence.
- Proper service of the charges on the delinquent.
- Allowing reasonable time and opportunity for meeting the allegations contained in the charges.
- Provision of opportunity to the delinquent to peruse the records/registers/documents/statements relied upon by the prosecution.

- Evidence should be recorded in the presence of the delinquent.
- Provisions of opportunity to the delinquent to defend himself by cross examining the witnesses produced by the prosecution.
- Permitting prosecution of any record/register/documents/statement by the delinquent on his behalf as defence exhibits.
- Permitting the delinquent to call for witnesses on his behalf as defence witnesses to corroborate his points or arguments.
- No material should be relied upon against the delinquent without giving an opportunity to him/her of explaining them.

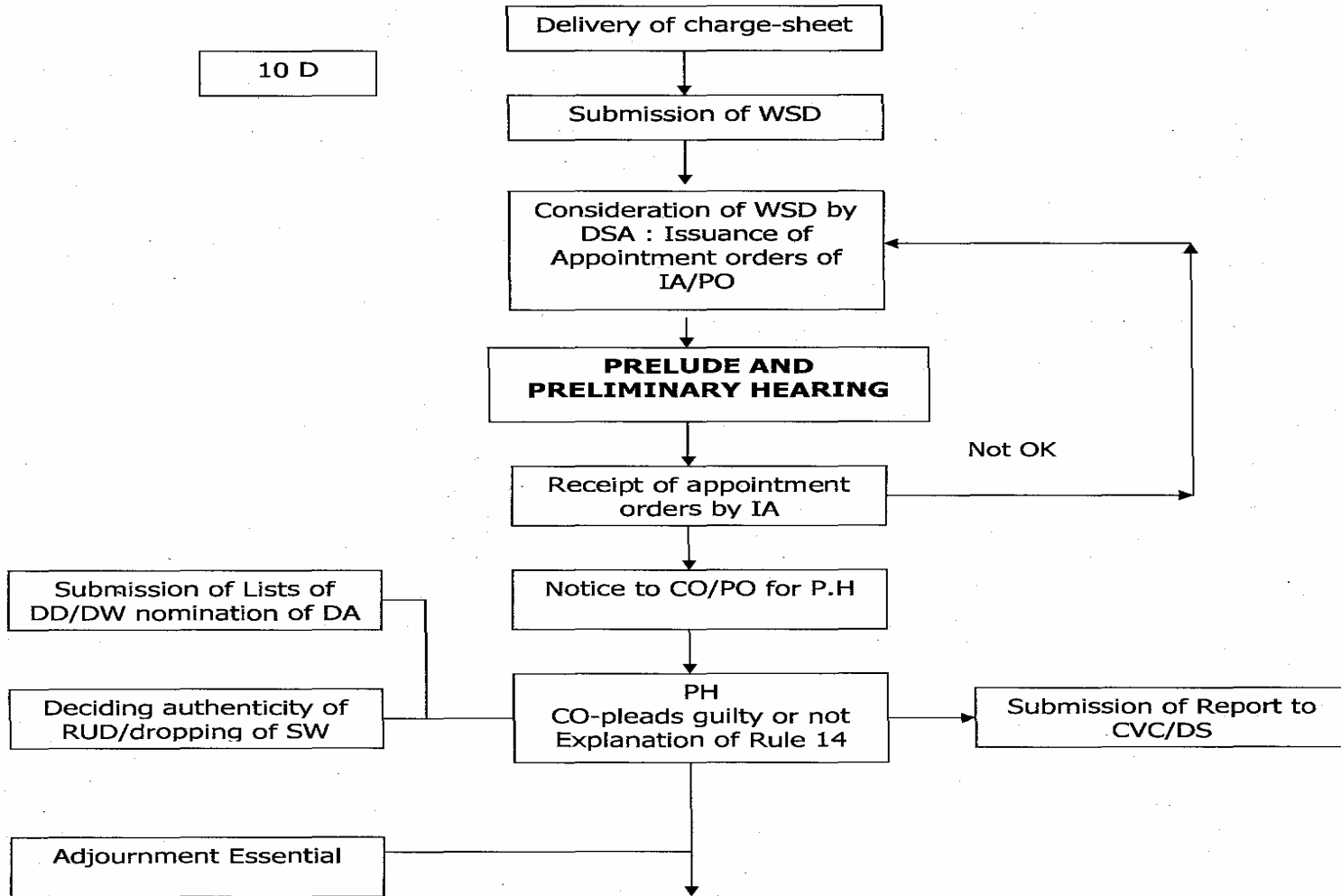
IMPORTANT DON'TS FOR ENQUIRY OFFICERS

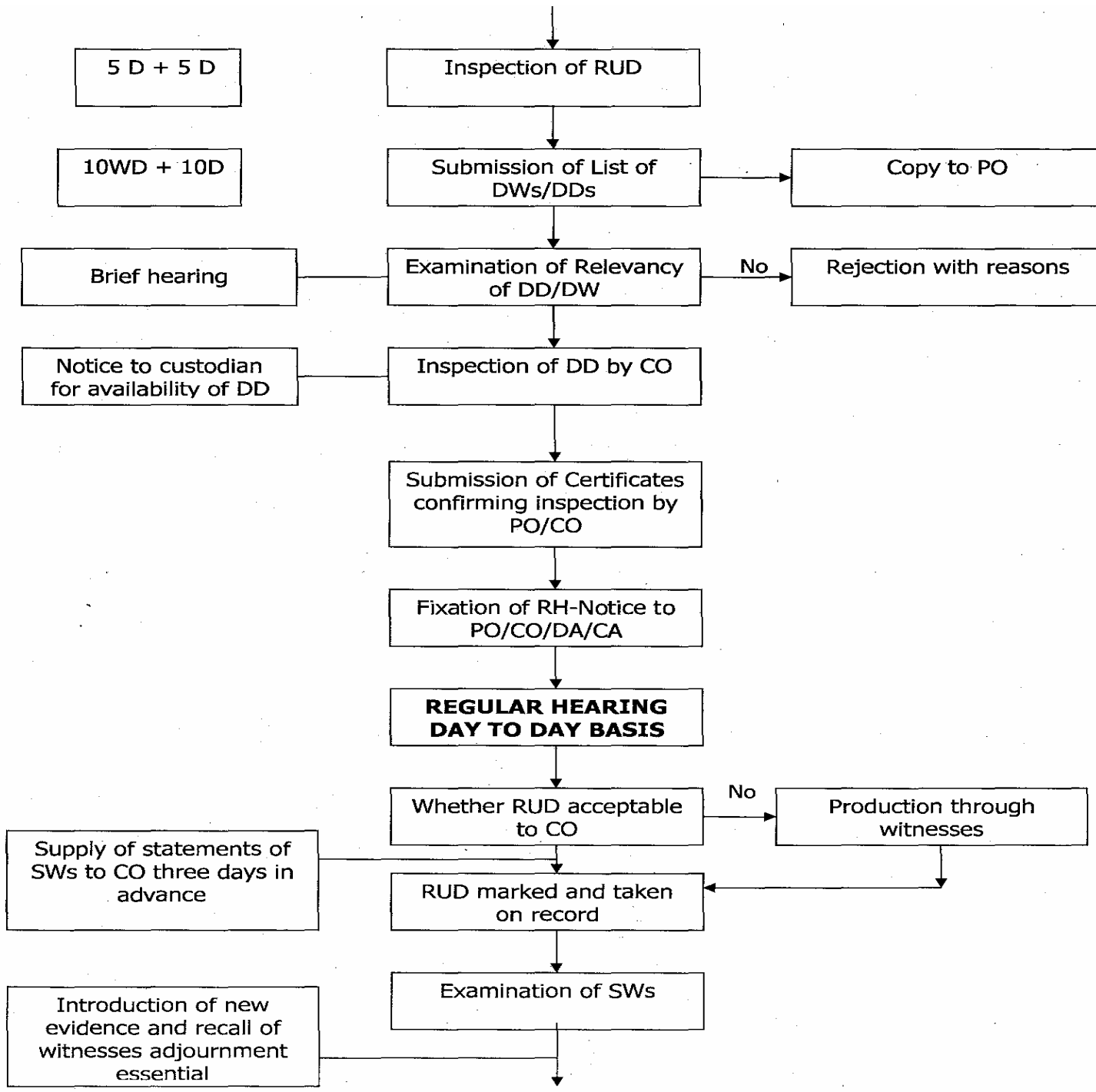
- ❖ Do not delegate function of holding of inquiry to any one else.
- ❖ Do not hold inquiry according to your own method. There is a prescribed procedure to follow.
- ❖ Do not continue with the proceedings (it has to be stayed) if representation of the delinquent alleging bias against the Enquiry Officer is pending with the competent authority.
- ❖ Do not postpone preliminary hearing simply because the delinquent could not arrange for defence assistant.
- ❖ Do not requisite additional documents from the Disciplinary Authority. You have to write direct to the authority in whose custody or possession these documents lie.
- ❖ Do not call for the documents or examine a witness to decide the question of their relevance.

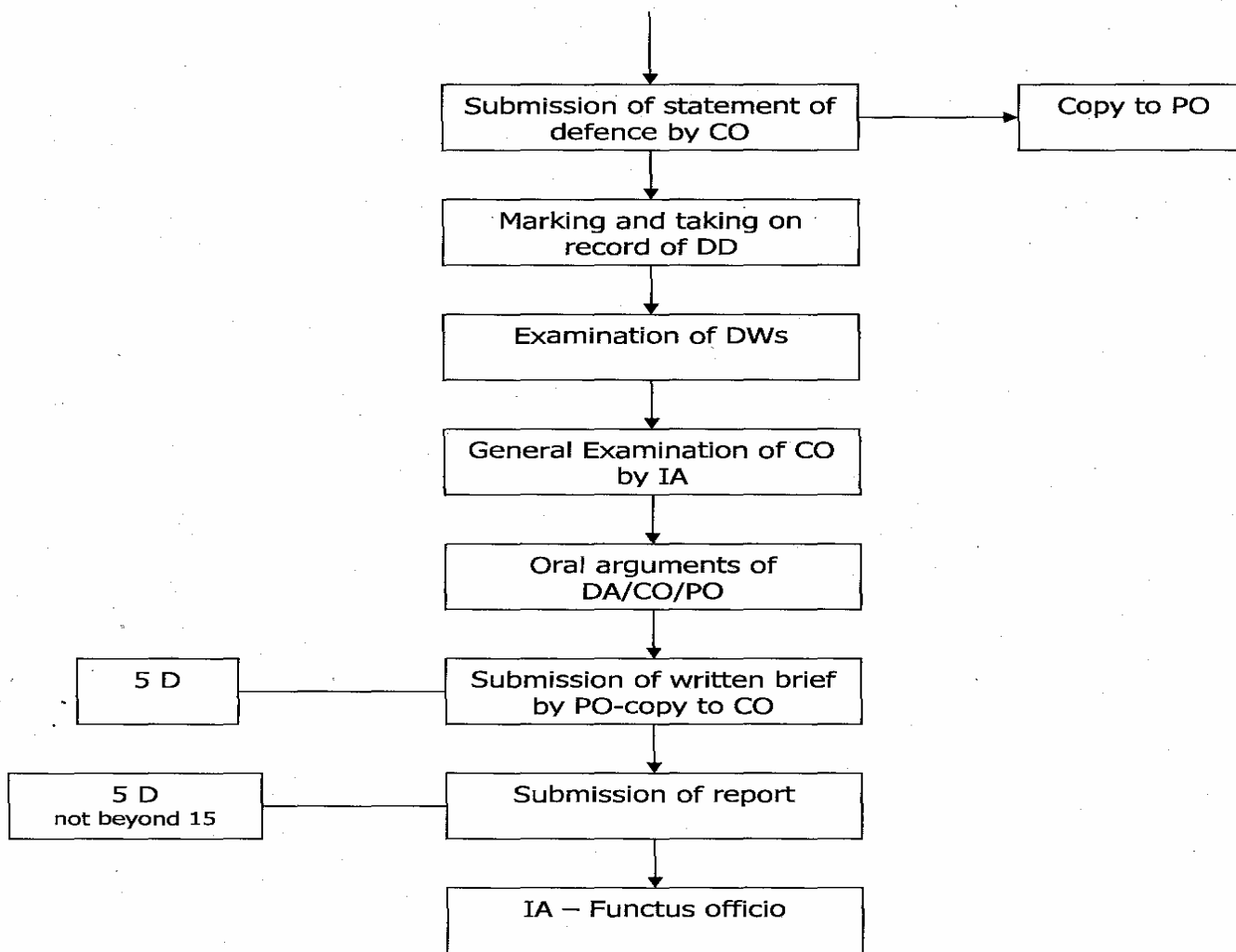
- ❖ Do not throw the responsibility of calling defence witnesses on the delinquent
- ❖ Do not question the witness extensively right at the outset. The witness should be examined in accordance with the prescribed procedure.
- ❖ Do not interfere frequently when a witness is being examined, cross-examined. The salutary principle in this regard is patience and graceful hearing. You may clear your doubts and get clarifications from the witness at the end.
- ❖ Do not allow leading questions, except in cross-examination. Do not put leading questions to the witnesses, yourself.
- ❖ Do not allow adjournments on flimsy grounds.
- ❖ Do not allow 'New evidence' to fill up gaps. It should be allowed if there is an inherent lacuna in the evidence already recorded.

- ❖ Do not precede ex-parte, if the charge sheet has not been delivered to the delinquent.
- ❖ Do not allow defence assistant when the charged employee is appearing as his own witness or when he is answering the mandatory questions towards the close of enquiry.
- ❖ Do not go for local inspection of the site of the incident except where accompanied by the delinquent. Better, make a local inspection after the prosecution evidence has been recovered. Do not collect information there from persons who have not been cited as witnesses.
- ❖ Do not take into consideration any matter or evidence which was not adduced during the course of enquiry. No importance should be given to surmise, conjectures, whims or your personal knowledge in the matter not on record.

ORAL INQUIRY PROCEDURE







- IA - Inquiring Authority
- PO - Presenting Officer
- D - Day
- SW - Prosecution Witness
- DW - Defence Witness
- RUD - Relied upon document
- DD - Defence Document
- DA - Defence Assistant
- DSP - Disciplinary Authority
- WSD - Written Statement of Defence
- PH - Preliminary Hearing

EX-PARTE INQUIRY

- ✓ In all notices please make clear that if charged officer fails to appear before you on the date fixed for hearing without valid cause and pre-intimation, proceedings will be held ex-parte.
- ✓ Before commencing ex-parte inquiry, ensure that
- ✓ (a). CO is not on sanctioned leave
- ✓ (b). Subsistence allowance is being paid to the CO if he is under suspension.
- ✓ In Ex-parte proceedings follow all steps as if charged officer is participating – Less cross examination.
- ✓ Send copies of daily order sheet and proceedings to charged officer by registered post.
- ✓ Permit charged officer to participate in later proceedings if he so desires.
- ✓ If CO shows satisfactory reasons for his non-participation in earlier hearings and requests for recalling a witness, decide on merit.
- ✓ Remember your aim is to find out the truth during ex-parte you have to be extra vigilant.

END