

*LEGAL & PRACTICAL ASPECTS
OF DEPARTMENTAL ENQUIRIES
ROLE OF ENQUIRY OFFICER,
PRESENTING OFFICER &
DEFFENCE ASSISTANT*

A presentation by :

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Legal Aspects

▪ Introduction

- When evidence of violation of departmental rules or misconduct or inadequate evidence for successful criminal prosecution.
- No person should be condemned unheard.
- He should be given fair and reasonable opportunity to defend.
- The person holding enquiry should be without bias and vindictiveness.

Legal Aspects (*continued*)

- The conclusion must rest on the evidence adduced during the enquiry and not on the evidence taken in the back of the charged officer or on matters outside the records.
- Successive Proceeding in respect of Same Matter State Vs. Man Singh Rao AIR 1958
- Anand Narain Shukla Vs. State of MP AIR 1979
- Choice Between Prosecution & Departmental Action S. Sree Ram Murthy Vs. C.W.C. 1990(I) SLR AP 21

Legal Aspects (*continued*)

- Departmental Enquiry while police case is pending - No bar (B. Balaiah Vs. D.T.O. Karnatka STC 1982, SL, KAR, 675).
- Simultaneous prosecution as well as departmental enquiry (Kushal Bhan case, AIR 1960)(K. Dubey Vs. BCCL, AIR 1988)
- B.K. Meena, IAS & Others (1996).
- Criminal Prosecution after Departmental Action and vice-versa (S.A. Venkataraman Vs. The State)
- Departmental Action after Acquittal in Criminal Case.

Legal Aspects (*continued*)

- Whether Investigation Report, Preliminary Report etc. should be supplied - No (Krishna Chand Tandon AIR 1974) & Chadrama Tiwari Vs. Union of India AIR 1988.
- Assistance of Lawyer whether permissible in Departmental Enquiry (K.C. Tandon Vs. Union of India 1974) - No violation of natural justice.
- V.R. Sambamurthy Vs. Union of India 1986 - Yes.
- J.K. Agarwal Vs. Haryana State Development Corporation AIR 1991 - NO

Legal Aspects (*continued*)

- Penalty to be Commensurate with Misconduct alleged (Sukhbir Singh Vs. DCP Delhi 1984(2) SLR, Shankar Das Vs. Union of India AIR 1985
- Whether Delinquent is entitled to the copy of enquiry officer's report - Yes. Mohd. Ramjan Khan's case

▪ INTRODUCTION

▪ A. The Genesis of departmental enquiries (RDA for Major and Minor Penalties)

*f*I. Matters of Vigilance Angle

*f*II. Cases originated from CBI.

–SIR / COMPLAINT/ STATE REFERENCE/ SUPREME COURT/HIGH COURTS

Preparation of Article of Charge

▪ Article of Charge

- i) In third person,
- ii) designation & the period of time involved,
- iii) not under provisions of PC Act/IPC,
- iv) only violation of service and departmental rules/conduct rules, irregularities
- v) misconduct, negligence,
- vi) failure to maintain absolute integrity and devotion to duty,
- vii) acts of commission & omission,,
- viii) disobedience of orders and instructions,
- **sl iv to viii to be brought under one or more of above heads,**

Check List

- i) in case of specific breach of specific rule of the Conduct Rules/Service Rules, the specific rule violated to be mentioned,
- ii) to be precise, distinct, clear and unambiguous language,
- iii) should communicate the delinquent officer the grounds on which he is being charged and particular irregularities which he has committed,
- iv) should not contain discussion of evidence or give opinions or conclusions.

▪ Statement of Imputation

- Contains the grounds on which the charges are based and the circumstances under which it is proposed to take action against the charged officer.
- Should be sent alongwith the draft Articles of Charge.
- Should be prepared in the third person so as to be in line with the draft Articles of Charge.

▪ **Check List**

- Should indicate clearly and in sufficient detail all the acts of omission or commission on which each charge is based.
- All instances of irregularities etc. which are relied upon in support of the charges and which are to be proved in the course of the proceedings should be specifically mentioned.
- Superfluous matters or comments and opinions of the Investigating or Prosecuting Officers or a discussion of the material available should be avoided.
- Should be confined to the narration of facts which constitute and support the charge.

- Procedure for RDA Major Penalty
 - f Receipt of enquiry report from CBI / Department.
 - Competent Authority
 - SP's Report with enclosures.
- b) Chargesheet (Memorandum)
 - f Proper format
 - f show cause notice
 - f Acceptance/not acceptance/Oral Hearing
 - f Enquiry to start when pleaded not guilty
- c) Appointment of Enquiry Officer & Presenting Officer.
 - f Disp. Authority as Enquiry Officer
 - f Enquiry officer sufficiently senior.

▪d) Preliminary hearing

f PO, CO to be present

f No Witness Summon

f In exceptional Cases, only occasion when PO may be represented by nominee of controlling office.

▪e) Daily Order Sheet.

▪i) Appointment of Defence Assistant.

▪ii) Inspection of documents.

▪iii) Supply of documents.

▪iv) Additional documents.

f Giving relevancy by CO

f Privileged documents.

f IOs may allow inspection of additional documents

f Additional documents by PO/DA allowed by IO for which copy to be supplied / extract given to CO

▪v) Issue of summons for witnesses.

(continued)

■ C. Regular hearing :-

f Listing of Documents and PWs /DWs

–Prosecution Case

f Examination-in-chief,

f Cross Examination,

f Re-examination of prosecution witnesses.

f Daily order sheets and deposition statements

f Next date to be fixed.

- Defence witnesses for the Charged Officer.
- Self examination of Charged Officer.
 - f* CO as DW
- Mandatory question by the Enquiry Officer.
 - f* Closing of hearing / Arguments
 - f* Oral Arguments to be reduced in writing
- Submission of written brief by the Presenting Officer with copy to CO.
- Submission of defence brief by the Charge officer.
- Submission of Enquiry Report
 - f* Within Six Months of Appointments

Administrative Action

- D. Action on the enquiry report by the Disciplinary Authority.
 - ƒ Revision / Further Enquiry
 - ƒ De-novo Enquiry
 - ƒ Disp. Authority not bound to agree.
- Advice of CVC (*2nd Stage in case of Senior GOs/Board Level Appointees*) .
- E. Appellate Authority
- Administrative Action
- Review
- Implement Order

- ***F. Procedure for RDA Minor Penalty***

- f Explanation/Memorandum*

- Practical difficulties and how to overcome them - delays***

- ***G) Difficulties arising out of delay : -***

- f Justice delayed is justice denied.*

- f Difficulties in processing for pensions, promotions etc.*

- f Unproductive extra work.*

- f Monitoring by the CBI and CVC.*

- *E. Reasons for delay and how to overcome with:*
 - f Contradiction between CVO, CMD/Chairman and CBI.*
 - f Short coming on the part of disciplinary authority.*
 - Lack of knowledge,*
 - Appointment of raw -hands as EO/PO*
 - f Simultaneous prosecution case.*
 - Difficulty in getting documents.*
 - f Lapse s on the part of Enquiry Officer.*
 - Mala -fide intention.*
 - Does not know the procedure.*
 - Indecision.*
 - Engagements.*

- **Hostile witnesses.**
 - f* Trap Case.
 - f* Leading Questions/Cross Examination/Gain-over
 - f* Private persons.
- **Delay in inspection of documents/copy supply.**
 - f* Bulky documents.
 - f* Not kept ready.
 - f* Irrelevant documents.
 - f* Late submission of lists.
- **Lapses on the part of Presenting Officer.**
 - f* Lack of knowledge.
 - f* Attitude
 - f* Not serving summons to witnesses.

■ Adjournalment

f By E.O.

f By P.O.

f By charged officer.

■ Dilatory tactics by the Charged Officer.

f Avoiding received of notice/summons

f Long list of documents.

f Delay in inspection.

f Medical Certificates.

f Written Representations.

f Request for change of E.O./P.O.

f Advocate as defence assistant

- Delay in getting appointment of Defence Assistant.
 - f* Parent department not releasing him.
 - f* Engagements.
- Difficulty in getting attendance of witnesses.
 - f* Far away.
 - f* Transferred.
 - f* Retired.
 - f* Present address not known.
- CAT cases, stay order of courts.
- Simultaneous Police cases/CBI cases.
- Adequacy report

Role of Presenting Officer

- After appointment ensure that copies of article of charge, statement of imputation, list of documents/witnesses etc. are available.
- Ensure that cited documents along with copies of statements of PWs are sufficiently available.
- Attend all the hearing.
- Keep in touch with the Enquiry Officer.
- Keep the whereabouts of all PWs upto date.
- Ensure the timely service of summons.
- Ensure PWs and brief them properly.

Role of Presenting Officer (*continued*)

- He should acquaint well with the facts and circumstances of the case.
- He should pursue all the documentary evidence pertaining to the case.
- He should be acquainted with various rules and regulations of department.
- He should have discussed the case with the original IO and I and officers of the concerned department.
- He should see the relevancy of documents and the witnesses.

Role of Presenting Officer

(continued)

- He should assist the Enquiry Officer.
- He should ensure that besides presenting the case on behalf of the disciplinary authority, sufficient opportunity given to the delinquent official.
- He should lead/present his evidence in a systematic and logical manner.
- He should never use his personal knowledge to cover up the matter causing prejudice.
- He should not ask unnecessary adjournments.

Role of Presenting Officer *(continued)*

- He should not insist to conduct the enquiry ex parte.
- He should not ask irrelevant questions.
- He should not delay in submission of written brief to the Enquiry Officer.

Role of Enquiry Officer

- To hold in depth enquiry.
- To bring out correct facts of the case.
- After holding an enquiry in accordance with the prescribed process to ensure an impartial and fair hearing to the charged official.
- To bring out on record all documents in support of the charges and those permitted for the defence.

Role of Enquiry Officer (*continued*)

- To record oral testimony of the prosecution and the defence witnesses after subjecting them to cross-examination by the opposite party.
- To examine the charged officer after evidence has been recorded.
- To get clarification from the CO on evidence against him.
- To write a reasoned report of enquiry giving his pointed findings whether the charges are proved or not proved.

Role of Enquiry Officer (*continued*)

- To ensure that reasonable opportunity given to charged official to defend himself.
- To complete the enquiry within limited time of six months by judicious use of his discretion to avoid delays not at the cost of natural justice.

Role of Defence Assistant

- This forms part of the reasonable opportunity enshrined in the constitution (Art. 311).
- He should be a person with an open mind, thorough with the departmental rules, regulations and with previous experience.
- Once appointed, should equip with all the relevant records, take extracts/copies of relevant documents while inspecting the documents.
- Go through and check the charges, various letters of appointments, documents.

Role of Defence Assistant

(continued)

- Cross-examine the prosecution witnesses skilfully to bring out the truth and expose the hollowness in their testimony.
- Discredit the prosecution witnesses by impeaching their trustworthiness.
- Ensure that no recall of witness, introduction of new evidence to fill up gaps or after defence witnesses taken up.
- Try to introduce new evidence.
- Remember that the mandatory question by the Enquiry Officer is a golden opportunity.

Role of Defence Assistant *(continued)*

- Argue that even if the preponderance of evidence is against your client, he acted bonafide without any deliberate intent.
- Avoid unnecessary dilectary tactics or any other such act which the Enquiry Officer may take otherwise.

- Any Question
- Thank you.