

SELF-LEARNING MODULE
INQUIRY OFFICER AND PRESENTING
OFFICER

REGIONAL TRAINING CENTRE (SR)
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LIST OF ABBREVIATIONS

IO - Inquiry Officer

PO - Presenting Officer

DA - Disciplinary Authority

CO - Charged Official

DOS – Daily Order Sheet

SECTION 1

INTRODUCTION

This section introduces the basic elements of disciplinary proceedings.

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 decides to issue a charge sheet – in the absence of the reply to the memo or due to unsatisfactory reply to the memo.

- (a) On receipt of the written statement of defence, the Disciplinary Authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary to do so, appoint under sub-rule (2), an Inquiring Authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the Disciplinary Authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in manner laid down in Rule 15.
- (b) If no written statement of defence is submitted by the Government servant, the Disciplinary Authority may itself inquire into the articles of charge, or may, if it considers it necessary to do so, appoint under sub-rule (2), an Inquiring Authority for the purpose.
- (c) Where the Disciplinary Authority itself enquires into any article of charge or appoints an Inquiring Authority for holding any inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

The Disciplinary Authority shall, where it is not the Inquiring Authority, forward to the Inquiring Authority –

- (i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (ii) a copy of the written statement of the defence, if any, submitted by the Government servant;
- (iii) a copy of the statements of witnesses, if any, referred to in sub-rule (3);

- (iv) evidence proving the delivery of the documents referred to in sub-rule (3) to the Government servant; and
- (v) a copy of the order appointing the “Presenting Officer”.

Basic aspects of Disciplinary Proceedings:

1. Documentation:

Documentation is the most important part for any departmental enquiry. It involves handling, disposal or creation of documents at different stages of enquiry.

The first document is the appointment order as an IO. It should be issued in a proper form and signed by the competent authority. Any legal flaw in this order has to be pointed out to the Disciplinary Authority (DA).

All documents related to the Inquiry and charge sheet are to be sent to the IO along with the appointment order by the disciplinary authority. If the documents are not received, they should be called for.

The proof of delivery of the charge sheet to the charged officer (CO) should be made available to the IO.

IO then has to send a notice to the CO to appear before him in person – on the date and time fixed by him within 10 – 20 working days of having received the charge sheet.

The CO has to furnish the details of the Defence Assistant if he / she wishes to nominate one.

The DA has to make available all documents appended to the charge sheet to the PO.

The PO is the custodian of all these documents till the enquiry is over and the report is submitted to the DA.

The PO may obtain all documents on the day of preliminary hearing or in the course of subsequent hearings. The listed documents brought on record are marked as exhibit S-1, S-2, S-3 and so on. Similarly, the documents brought on behalf of the CO, are allotted serial numbers D-1, D-2, D-3 and so on. The undisputed documents are taken on record straightaway. Documents which are doubtful are introduced through a witness who can verify the genuineness or authenticity of the documents.

2. Inspection of documents:

The charged officer has the right to access two types of documents before the commencement of hearing to defend himself. First is the set of documents which are enclosed with the charge sheet by the DA to prove the charges. Second is the set of documents which may be in the custody of the administration which the CO wants to access to defend himself.

The CO while asking to access any document must clearly state the relevance of each document. These defence documents are called as Additional Documents.

The IO may deny the access to such documents stating that they have no relevance to the case or the request may also be denied by the Head of the Organisation on grounds of prejudice to the public interest or security of the state. In case the CO is given access to certain permitted additional documents, the same may be accessed in the presence of IO or the PO.

The CO may make copies of the documents or may take extracts from the documents but the IO or the PO may see that the documents are not tampered with.

It may even become necessary for the PO to take permission on behalf of the DA to seek permission from IO to introduce fresh documents, not included in the original list to support the charge sheet which may not have been included earlier. Such request can be granted by the IO, only when there is inherent lacuna or defect in the evidence which has been produced originally. Before new evidence is permitted the IO should take a decision based on the arguments from both the sides. When new documentary evidence on behalf of the DA is introduced, the document so introduced should be offered for inspection, before it is brought on record, with a minimum of clear three days between the adjournment (on account of proposal to introduce fresh evidence) of proceedings and resumption of proceedings.

3. Daily Order Sheet:

Daily Order Sheet (DOS) is the record maintained by the IO of all the business transacted by him on day to day basis of the conduct of inquiry proceedings. The gist of requests and representations made by either party and orders passed thereon by the IO are to be incorporated in the DOS. The DOS should have the following points:

- additional documents and witnesses asked by the CO in his defence
- additional documents and defence witnesses permitted
- reasons for disallowing the remaining documents and witnesses.
- whether the additional documents permitted were made available for inspection and were inspected by the CO
- if the authority having the custody of such documents has consented or not consented to its production – the fact of such refusal.

The DOS which is made on day to day basis is to be dated and signed by the IO, the PO, the CO, and the defence assistant. The copies of the DOS are to be given to the PO and the CO too.

If the CO, the PO or the defence assistant refuse to sign on the DOS the fact of such refusal should be mentioned in the DOS.

4. Interlocutory orders:

These are orders passed by the IO during the actual conduct of inquiry. These may be on various points or objections raised by the PO or the defence assistant. There may arise during the inquiry several occasions which require on the spot decisions and orders by the IO e.g. the CO may ask for xerox copy of listed documents or he may ask for certain defence witnesses or he may ask for the postponement of hearing etc. In such a scenario the IO has to listen to all parties and give a decision which is not biased and based on principles of natural justice. The IO has to listen to both the parties and give decision based on his own discretion.

The IO has full powers to pass Interlocutory orders and there is no appeal against such orders. The IO may use such powers very judiciously on the basis of valid reasons which are to be recorded in the DOS.

Departmental proceedings are of quasi-judicial nature and it is obligatory that all decisions which are taken should be recorded and it should be ensured that the decisions taken were not based on whims or fancies or not a result of any caprice. The reasons recorded for reaching a decision should reflect a rational relation between the facts considered and the conclusion reached.

The list of such Interlocutory orders should be drawn up

Each situation requires to be independently and thoroughly considered by the IO.

5. Recording of Evidence:

Recording of evidence is the proving of validity of listed documents through witnesses and recording their oral statements if any. Examination of a witness is done in 3 parts – examination in chief, cross examination and re-examination. Guiding principles for these are:

- Straightaway verification of admitted documents and facts
- Earlier written statements made by the witnesses may be read out to them and they may be asked whether they admit the statements or not
- If the statement by the witness is accepted, it is marked as Exhibit and the CO can proceed with cross examination.
- The PO has to produce the disputed documents through witnesses.
- The deposition of every witness has to be on separate sheet. It is required to be signed by the IO and the deponent.
- Copies of the statements recorded during the course of the proceedings should be supplied to the PO and CO after the recording.

6. Inquiry Report:

After the conclusion of the inquiry, the IO has to prepare a report and forward the same to the DA along with the records of the inquiry consisting of all documents on which the IO depended upon to reach his / her conclusions. The inquiry report is as follows:

- Introduction
- Details of the Defence Assistant if availed of by the CO
- The charges and the substance of imputation of misconduct
- Case of the DA
- Case of the CO
- Analysis and assessment of the evidence
- Findings and decision against each charge – whether charge is sustained or not sustained

The report is to be based only on the evidence brought on record. The evidence should be weighed and evaluated very carefully and impartially. The IO has to draw his inferences and record his conclusions. The assessment of evidence and arguments on each charge should be done under different headings.

The IO has to forward the report to the DA.

SECTION 2

APPOINTMENT OF INQUIRING AUTHORITY AND PRESENTING OFFICER – this section explains the procedure of appointment of the IO and PO

1. When are the IO and PO appointed?

IO and PO are to be appointed if there is a need to inquire into the charges. The need will emerge only when the Charged Officer denies the charges or does not respond to the charge sheet. Thus, the appointment of IO and PO will arise only after the charge sheet is issued and the charged officer either does not respond to it or denies the charge without convincing the Disciplinary Authority.

2. Who appoints Inquiring Authority and Presenting Officer (PO)?

IO and PO are appointed by the Disciplinary Authority as per the CCS (CCA) Rules.

[Although the terminology used in the CCS (CCA) Rules 1965 is “*Inquiring Authority*” in common parlance, the authority is always referred to as Inquiry Officer or IO. Accordingly, in this text the said authority is referred to as IO.]

3. Is it always necessary to appoint an IO and PO?

An alternative to appointment of IO is the disciplinary authority itself performing the duties assigned to IO in the rules. However, there is no such alternative for the PO.

There may be certain organizations falling outside the purview of CCS (CCA) Rules where there is no scheme for appointment of PO. Even in respect of such organizations also, the CVC has made the following recommendations in para 24.2 of Chapter X of the 1991 edition of its Manual:

As the appointment of a Presenting Officer would help in the satisfactory conduct of departmental inquiry, the Central Vigilance Commission has advised that even in cases where the disciplinary rules do not contain a specific provision for the appointment of a Presenting Officers, the disciplinary authorities may consider appointing a Presenting Officer for presenting the case before the Inquiring Authority.

4. Other than the above, is there any exception to the appointment of IO?

The CCS (CCA) Rules provide that in respect of the cases pertaining to sexual harassment, the complaints committee constituted in the Ministry or Department shall be deemed to be the Inquiry Authority appointed by the Disciplinary Authority for the purpose of Rule 14 of the CCA Rules.

The said proviso, inserted through a notification dated 1 July 2004, also provides

that the above stated complaints committee shall hold its inquiry as far as practicable in accordance with the provisions of Rule 14, unless a separate procedure has been prescribed.

5. Who can be appointed as IO?

The rules do not prescribe any qualification for appointment as IO. However, principles of natural justice require that the person appointed as IO has no bias and had no occasion to express an opinion in the earlier stages of the case. Besides, there are a number of Government Instructions on the subject such as the following:

S.No	Reference No.	Date	Gist
(a)	DP&AR OM NO. 35014/1/76-Estt.(A)	29 Jul 1976	Unless unavoidable Disciplinary Authority should refrain from being IO.
(b)	MHA OM No. F. 6/26/60-Ests. (A)	16 Feb 1961	Although there is no bar to appoint the immediate superior of the CO as IO, as a rule, the person who is appointed as IO should not be suspected of any bias in such cases.
(c)	Dept of Per O.M. No. 7/12/70-Ests.(A)	6 Jan 1971	IO should be senior in rank to the officer inquired against
(d)	O.M. No. 42/20/2008-AVD I.	27 Jul 2009	Terms and conditions for appointment of retired officers as IO

6. Who can be appointed as PO?

The CCS (CCA) Rules provide that either a Government servant or a Legal Practitioner may be appointed as Presenting Officer. Thus, the choice is limited to either one of the two explicitly stated categories.

Para 24.1 of Chapter X of the Vigilance Manual (1991 Ed) provides that 'An officer who made the preliminary investigation or inquiry into the case should not be appointed as Presenting Officer'.

7. What is the remuneration payable to the IO and PO?

Honorarium, Transport Allowance and Secretarial Assistance charges have been laid down vide DoPT OM No. No.142/15/2010-AVD-I dated 31st July, 2012 subject to certain conditions.

SECTION 3

ROLE AND FUNCTIONS OF INQUIRY OFFICER

1. What is the basic responsibility of the Inquiry Officer?

As stated in Rule 14(2) the basic purpose of appointment of 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.

2. What are the various activities performed by the Inquiry Officer for the discharge of the above function?

Various activities to be performed by the Inquiry Officer may broadly be classified as under:

- Pre-hearing stage
- Preliminary hearing stage
- Regular hearing stage
- Post hearing stage
- At any stage during the Inquiry tackling some unusual circumstances which may arise

The details of the activities are explained under different questions in separate paragraphs hereunder.

3. What are the activities to be performed by the IO during the pre-hearing stage?

- Verifying the appointment order and the enclosed documents
- Acknowledging the appointment
- Preparation of the Daily Order Sheet – This will be done throughout the Inquiry
- Analysing and understanding the Charges
- Fixing the date for Preliminary Hearing
- Sending communication to the parties about hearing
- Informing the Controlling Officers of Charged Officer and Presenting Officer
- Ascertaining as to whether the Charged Officer has finalised a Defence Assistant and if so informing the Controlling Officer of the Defence Assistant

4. What is the scope of verification of appointment order and the enclosed documents?

It is desirable that the IO scrutinizes the order appointing him as IO and the enclosed documents thoroughly. Firstly, the appointment of Inquiry Officer is required to be made by the Disciplinary Authority and no one else.

When the President is the Disciplinary Authority, the order of appointment of the IO may be signed by any authority that is competent to sign communications on behalf of the President. At any rate the Order should indicate that the appointment of IO is being made by the President only.

Any deviation in this regard will constitute an incurable defect in the Inquiry. The complete proceedings will be liable to be quashed if the IO had been appointed by someone other than the Disciplinary Authority.

Similarly, there may be situation wherein the charged officer, while denying the charges, might have quoted a reference number different from the one mentioned in the charge sheet. It is desirable to resolve such discrepancies at the initial stage before it becomes too late.

5. Can the IO take initiative for removing the deficiencies in the Charge Sheet?

IO has full liberty to bring to the notice of the Disciplinary authority any discrepancy which is of the nature of clerical or typographic mistake, i.e. patent errors which are apparent in the face of the record. In case there is any patent defect in the Charge Sheet, the I-O may bring it to the notice of the Disciplinary Authority well in time so that the defect can be cured.

In this context it is essential that IO should not take upon himself the role of refinement or reinforcement of the Charge Sheet. He should confine himself only to the patent errors in the Charge Sheet and not try to make qualitative improvement in it. **Any initiative by the IO for the fortification of the charge sheet by way of including additional evidence is most likely to provide material for challenge on grounds of bias as the action of the IO is liable to be perceived as that of a prosecutor.**

An illustrative list of patent errors is as under:

- Typographic mistakes
- Quoting wrong Rule Numbers. E.g.
 - Charge sheet is being issued under Rule 15 of the CCS (CCA) Rules 1965
 - The acquisition of this immovable property was not reported to the competent authority as required under Rule 81 (2) of the CCS (Conduct) Rules 1964.
 - Incompatibility between the name of the Rule and its year e.g. CCS(CCA) Rule 1955
- Incompatibility between the same figures mentioned in different parts of the Charge Sheet.
- Names of persons or places mis-spelt in the Charge Sheet e.g. “...

acquired a house at Hidurabad at a cost of Rs. 13,00,000/=”

- Inconsistency between the numeric and verbal description of an amount e.g. “Rs. 7,348/= (Rupees Three Thousand Seven Hundred and forty-eight) “
- Wrong mention of the reference number and/or date of communication as well as Government instructions.

Illustrative list of errors which IO should not try to rectify is as under:

- Any logical inaccuracies
- Insufficiency of evidence
- Vagueness of charge
- Ambiguity in charge
- Lack of coherence between the misconduct and the charge. E.g. Unauthorised absence is shown as lack of absolute integrity, while it would have been better described as lack of devotion to duty.

6. Is it necessary for the IO to acknowledge the appointment order?

It is a good practice for the IO to acknowledge his appointment. This will keep the Disciplinary Authority informed that the IO has taken charge of the matters and is proceeding with the task.

In case the IO is not able to take up the appointment, on account of any valid reason, it is all the more important that the Disciplinary Authority is informed well in time. While a person is not expected to turn down the appointment as IO due to personal reasons, there may be circumstances wherein the IO may have to decline to act so in the interest of the case or due to organisational reasons. Such occasions should be extremely rare. But when such circumstances arise, the IO should inform the Disciplinary Authority without any delay with complete reasons.

7. What is Daily Order Sheet (DOS)?

Daily Order Sheet is the record of the progress of the case handled by the IO during a day. It is prepared and maintained by the IO. While no definite format has been prescribed for the purpose, it is desirable to indicate the following in the Daily Order Sheet.

- Serial No of the order
- Date
- Parties present
- What happened [e.g. State Witness No. 3 and 4 examined, cross examined and re-examined. At the conclusion of hearing, Charged Officer intimated that he may not be able to attend hearing for two weeks because he had received message from his native place stating that his mother is not well. He accordingly requested that the next hearing may be held after two weeks. Request has been agreed to. Date of Next Hearing will be

- intimated to the parties after two weeks]
- Signature of the parties concerned

8. What is the importance of DOS?

It needs to be appreciated that Daily Order Sheet will be the most authentic record for ascertaining as to what happened in the course of inquiry because it is signed by all present.

Inquiring Authority should therefore pay adequate care to the accurate recording of DOS. All the opportunities granted to the PO needs to be recorded without fail because these will help in countering the allegation, if any, of inadequate opportunity raised by the Charged Officer at the later stage.

9. Are copies of the DOS supplied to all the parties concerned?

Copy of DOS must be given to the parties present and signing it. While conducting ex-parte proceedings, it would be a good practice to dispatch the copies of the DOS to the delinquent official. This action will manifest the bonafide of the authorities, in case the delinquent official alleges denial of reasonable opportunity, bias, malafide, etc.

10. When is the Daily Order sheet to be prepared?

Daily Order Sheets are to be prepared whenever there is a progress in the case – not only when hearing takes place. Thus, the first Daily order sheet may be made on the day when IO received his/her appointment order. It may read as under:

Daily Order Sheet No. 1

Dated 99. Aaa.9999 Parties present: None

Received Order No. dated from appointing me as the Inquiry Authority to look into charges framed against vide Memorandum No. dated

The following papers were also received along with the Charge Sheet:

- Copy of the charge sheet
- Copy of the written statement of defence
- Copy of order No. dated appointing Shri as Presenting Officer in the case.

An acknowledgement was sent to the Disciplinary Authority.

Sd/- Name

Designation

11. How does the IO analyse and understand the charge?

IO has to perceive the charge sheet based on the Charge – Fact – Evidence correlation. This will help in analyzing and appreciating evidence.

This will help the IO to proceed with the task with clarity right from the initial stage.

12. What are the precautions to be taken by the IO during the pre-hearing stage?

The date for the preliminary hearing must be chosen in such a way as to provide reasonable opportunity to the parties concerned. For example, if the parties are posted outstation, date of hearing must be fixed so that there is adequate time for the communication to reach the parties and adequate time for the parties for undertaking the travel and reaching the venue.

13. What is preliminary hearing stage?

The phase of the hearing from the first appearance of the parties before the IO till the stage of recording of evidence is known as preliminary hearing.

14. Under what circumstances, the IO may stay the proceedings?

IO cannot stay the proceedings except under one of the under mentioned two circumstances:

- When there is a stay order from the court of competent jurisdiction
- When the Charged Officer has expressed lack of faith in the IO

15. What course of action is open to the IO when the Charged Officer presents an order from the Court staying the proceedings?

Under the above stated situation, the Disciplinary Authority must be promptly informed of the development, to enable the Disciplinary Authority to seek legal advice regarding scope of the order and to explore the possibility of filing appeal against the stay order. IO should not proceed with the inquiry unless the stay order is vacated by the court or the Disciplinary Authority informs, based on legal advice that the stay order does not apply to the case in question.

16. What course of action is open to the IO when the CO expresses lack of confidence on the IO?

As stated above, the IO shall stay the proceedings forthwith and inform the CO that he is at liberty to seek a change of IO as per Rules. IO should also inform the CO that the proceedings cannot be stayed indefinitely to facilitate the CO making application for change of IO and that the CO must submit the

application within a prescribed time (say one week) and submit proof thereof; else the IO is at liberty to proceed with the inquiry.

Simultaneously, the IO should apprise the Disciplinary Authority about the development and await further instructions.

17. What are the functions of the IO during the Preliminary Hearing stage?

During Preliminary Hearing, IO is required to perform the following actions:

- Making arrangements for conducting the hearing
- Setting the stage for smooth conduct of hearing
- Asking the statutory questions
- Finalisation of the question of Defence Assistant
- Fixing dates for Inspection of the originals of the documents
- Fixing dates for the submission of the list of additional documents and witnesses required by the CO for the purpose of his defence
- Finalisation of the documents and witnesses admissible for defence
- Taking action for procuring the additional documents required for the defence.
- Settling the issue of disputed documents
- Taking the documents on record
- Issue of certificates of attendance to the parties. This will be done during regular hearing stage also.
- Deciding on the requests for adjournment

18. What arrangements are to be made for conducting hearing?

Even before the arrival of the parties, the IO should ensure necessary seating arrangements for conducting hearing. Preferably, the seating arrangement should be such that both the parties will have equal access to the IO and the IO can watch and hear both the parties comfortably.

At any rate, the seating arrangements should not be such as to send any signal that IO is inclined in favour of either of the parties. Besides, it is desirable that no one other than those who are required for the hearing is present in the room while the hearing is in progress. This may not always be possible and it depends upon the space provided to the IO by the organisation. However, IO should apply his mind to this aspect.

Making a stenographer and a computer available for the recording the proceedings is another aspect to be attended to by the IO.

19. What are the activities to be performed by the IO during the regular hearing stage?

During regular hearing stage, IO will continue to prepare and issue Daily Order Sheets and certificate of attendance as was being done earlier. In addition, IO will

be performing the following activities:

- Summoning witnesses
- Monitoring the conduct of the examination of witnesses
- Recording the statements of the witnesses
- Recording the demeanor of the witnesses
- Deciding objections about the questions raised during examination of witnesses.
- Deciding requests for introducing additional witnesses.
- Deciding requests for recalling witnesses
- Asking the CO to state his defence on conclusion of the case of the Disciplinary Authority.
- Putting the mandatory questions on conclusion of the case of the defence
- Checking up from the CO as to whether he got sufficient opportunity for his defence.
- Giving directions for the submission of the written briefs by the Presenting Officer and the CO.

20. Does the IO have power to enforce attendance of witnesses?

IO does not have power to enforce attendance of witnesses, except when an ad hoc notification in respect of the particular inquiry has been issued by the Central Government authorizing the Inquiring Authority to exercise powers specified in Section 5 of Departmental Enquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act 1972.

21. What is to be done, if a listed witness does not turn up for inquiry?

In case a Government official who has been named as a witness in a departmental proceeding fails to turn up, the matter may be reported to the higher authorities of the witnesses. Para 91 of P&T Manual provides that refusal to appear as witnesses can be construed as sufficient cause for initiating disciplinary proceedings against him.

22. What are the post hearing activities to be performed by the IO?

During the last hearing, the IO will fix time limit for the PO and the CO to submit their respective written briefs.

Thereafter, the IO prepares his report and submits the same to the Disciplinary Authority together with the records of the case.

23. What is the time frame within which the Inquiry is to be completed by the IO?

As per the Vigilance Manual (Ed 2005) Inquiry Report is to be submitted by the IO within **six months** from the date of appointment.

It is to be kept in mind that the IO is not a prosecutor. It is not his duty to prove the charge. He or she should not assume that the delinquent officer is guilty and the delinquent officer has to somehow admit to the guilt. Such an approach would indicate bias on the part of the IO and must be avoided. The IO is a delegate of the DA but is not subject to his orders or instructions or those of anyone superior in the chain of hierarchy.

After all the hearings are over and all the evidence and the witnesses have been examined to the satisfaction of all the parties concerned, the IO has to submit his/her report. The report has to consist of the copies of all the Daily order sheets, the listed documents which have been examined from both sides and the statements of the witnesses examined. The IO will conclude his/ her report by going through each charge in the charge sheet and stating whether the charge is sustained or not sustained with proper reasons.

SECTION 4

ROLE AND FUNCTIONS OF THE PRESENTING OFFICER

1. What is the basic responsibility of the Presenting Officer (PO)?

Presenting Officer is appointed for the purpose of presenting the case of the Disciplinary Authority so that the charges can be proved in the Inquiry. In many ways, the role of the presenting Officer is a challenging one. His role is comparable to that of the anchor runner in a relay race. Many people have carried the baton and finally it has been handed over to him.

An intelligent Presenting Officer can make up for the mistakes committed by the earlier functionaries and accomplish the target. Similarly, a bad Presenting officer may lose the advantage acquired by the Investigating officer, Vigilance Officer, etc. and may lose the case through bad presentation.

2. What are the various activities performed by the PO for the discharge of the above function?

For achieving his objective, the Presenting Officer is required to perform several functions. Basically, the Presenting Officer is required to lead the evidence of the Disciplinary Authority and satisfactorily answer the contentions raised by the Charged Officer. Thus, the explicit functions of the Presenting Officer are:

- a. Presenting the documentary evidence
- b. Leading the oral evidence on behalf of the disciplinary authority
- c. Cross examining the defence witness
- d. Preparation and presentation of the written brief

Successful accomplishment of these explicit functions, call for a number of implicit functions as well. Some of the actions such as liaison with the Disciplinary Authority has to be performed by the Presenting Officer throughout the course of his assignment. Notwithstanding this, various actions to be taken by the Presenting Officer in the course of his assignment can be conveniently categorised into the following four phases:

- Preparatory stage
- Preliminary Hearing stage
- Regular Hearing stage
- Post hearing stage

3. What are the activities performed by the PO during the preparatory stage?

Following are the activities performed by the Presenting Officer during the preparatory stage:

Apart from examining the Appointment order and the documents received along with it, the PO should:

- Establish rapport with the Inquiry Officer
- Understand the charge
- Analyse the charge
- Link the facts to evidence
- Anticipate possible line of defence: At the preparatory stage, the Presenting Officer should also anticipate the line of defence, the Charged Officer will be taking.
- Visualise the transaction

4. What documents are to be received by the PO along with the appointment order?

PO receives the following documents along with the Appointment Order:

- Charge Sheet along with the enclosures.
- Written Statement of defence submitted by the charged officer.
- In case the Charged Officer has not filed any Statement of Defence, a confirmation to the above effect and a confirmation to the effect that the Charge Sheet has been served on the Charged Officer.
- A copy of the order of appointment in respect of the Inquiry Officer.

5. Will it be fair and appropriate for the PO to meet the IO unless called for a hearing?

Presenting Officer is the agent of the Disciplinary Authority and his endeavour is to prove the charge. On the other hand, the Inquiry Officer is an impartial authority who is required to decide the case on the basis of the evidence led before him.

Notwithstanding this position, the Presenting Officer should consider himself as one assisting the Inquiry Officer in ascertaining the truth. Often it is said that the relationship between the Disciplinary Authority and the Presenting Officer is similar to that between the client and an advocate.

Presenting Officer is compared to the Government Counsel. Every counsel is an officer of the court and owes a responsibility towards the court in helping the court to ascertain the truth. On the same analogy, the Presenting Officer should consider himself as an officer under the Inquiry Officer assisting the latter to

ascertain the truth. Immediately on receipt of the appointment order, the Presenting Officer should get in touch with the Inquiry Officer and assure him of his co-operation. It is also desirable that the Presenting Officer informs the Inquiry Officer of his address and phone number to facilitate easy communication.

Needless to add, it will be unethical for a PO to influence the IO regarding the hearing and its outcome.

6. What is the need for the PO to understand the charge immediately on receipt of the appointment order?

Presenting Officer can present the case effectively only if he understands the case of the Disciplinary Authority thoroughly. The first step in this regard calls for the understanding of the charge. Often the charge is that a person has done something which should not have been done or has failed to do something which should have been done. That someone has used abusive language, (which should not have been done) is a charge. That a person has failed to keep the cash book up to date, (failed to do something, which should have been done) can be a charge. While charges like unauthorised absence, insubordination, etc. can easily be understood, there may be situations wherein the omission or commission of the Charged Officer may not be easily understandable. The clue for understanding the charge is asking the following questions:

- What has the Charged Officer done or failed to do?
- What was required to be done or not to have been done?
- Which rule or instruction prescribes what is required to be done or not to be done?

7. How does the PO analyse the Charge?

The PO has to perceive the Charge – Fact – Evidence co-relation in the Charge Sheet. For example, if there is a charge that an officer (working in a stores department) has procured certain items without any demand for the same from the sub-depots and thereby violated certain departmental instructions, the charge involves the following facts:

- That there are some instructions relating to the manner of procurement of items.
- That the instructions require that the items can be procured only after the receipt of the demands from the sub-depots.
- That the officer purchased the specified items.
- That there was no demand from any sub-depot for these items.

8. How should the PO link evidence to charge?

Every fact that is required for establishing the charge must be presented through some evidence. Presenting Officer must locate evidence at his disposal for establishing various facts. This can be done by listing out the facts to be proved in the inquiry and examining which piece of evidence (in Annexure III and IV) will help in establishing the fact. The officer who has carried out the Preliminary Investigation can be of great help in this regard because he has already reached certain conclusions on the basis of the evidence gathered by him during the investigation stage.

9. What is the sphere of activities during the Preliminary Hearing Stage, with which PO is concerned?

- Collection of original documents
- Finalising the schedule for the Inspection of the listed documents
- Conducting the inspection of the listed documents
- Additional documents required by the Charged Officer
- Collection of the documents cited by the Charged Officer
- Handing over the listed documents to the Inquiry Officer after the inspection
- Obtaining the copies of the documents required by the Charged Officer

10. Wherefrom and when does the PO collect the original documents?

Originals of the documents listed in the charge sheet are generally held by the Disciplinary Authority. Normally they are retained by the Vigilance Section or the Administrative section which has processed the case for issue of Charge Sheet.

The same will have to be obtained by the Presenting Officer and kept in safe custody till it is got inspected by the Charged Officer and finally presented to the Inquiry Officer.

Depending upon the nature of the documents and convenience of the parties, these documents may be taken over by the Presenting Officer at an appropriate time. At any rate, the documents must be with the Presenting Officer before the inspection of the same by the Charged Officer.

It is advisable for the Presenting Officer to critically examine the originals of the listed documents so that the disputes which the Charged Officer is likely to raise may be anticipated and proper remedial action can be planned.

11. When does the inspection of documents take place?

It is during the Preliminary Hearing, that a decision is taken for the Inspection of the Documents. As per Rule 14(II)(i), inspection of the documents is required to be done “within 5 days of the order or within such further time not exceeding five days as the Inquiring authority may allow”.

The Presenting Officer will have to indicate to the Inquiry Officer, his preference for the venue, date and time of the inspection of the listed documents. Depending upon the mutual convenience of the parties, the Inquiry Officer will fix the schedule for the inspection of the listed documents.

12. What precautions are to be observed by the PO during inspection of documents?

Inspection of listed documents by the Charged Officer is a sensitive event in the disciplinary proceedings. IO is at liberty to leave it to the PO and CO. Under such a situation, it is for the Presenting Officer to get the Inspection of listed documents completed.

Presenting officer has to exercise great care and caution during the inspection of original documents by the Charged Officer. There have been occasions wherein the originals were destroyed during the inspection. At the same time, Inspection of originals is a valuable right of the Charged Officer and the same cannot be curtailed by unwarranted and unreasonable restrictions.

The following suggestions are worth considering at the time of inspection of documents:

- The Charged Officer may not be allowed to hold a pen while carrying out the inspection of the originals. A small dot or bar or a comma or a colon may change the contents of the originals enormously. As Charged Officer is entitled to take notes at the time of inspection, he may be advised to take notes with a pencil.
- Preferably one document at a time may be given to the CO. There may be a number of documents which will be inspected by the Charged Officer. Simultaneously handing over all the documents to the Charged Officer will have many disadvantages. It is appropriate to give the documents one after another. Once a document has been inspected, the same must be taken back and then another document may be handed over for inspection. As the Charged Officer has been supplied with the copies of the documents, he may not require to compare the contents of the originals. However, if the Charged Officer requires to simultaneously peruse two documents, the same may be allowed ensuring the safety of the documents.
- Keep the document equidistant between the Charged Officer and the Presenting Officer. This will enable the Presenting Officer to have physical control of the original document if the charged officer tries to destroy.
- Never leave the documents in the custody of the Charged Officer. It is advisable that the Presenting Officer is always present in the room

throughout the inspection. In case there is an extreme emergency, the Presenting Officer may temporarily suspend the inspection, keep the documents under lock and key and request the Charged Officer to wait for a few minutes. Alternatively, depending upon the nature of the document being inspected, some reliable person may be asked to take charge of the situation temporarily.

- The Charged Officer and the Defence Assistant must be treated with utmost courtesy, when they visit the Presenting Officer for the inspection of the documents. In case there is any difference of opinion about the rights of the Charged Officer or the limitations which the Presenting Officer may impose, the matter may be referred to the Inquiry Officer rather than entering into an unpleasant debate.

13. What is the role of the PO with regard to the Additional documents and witnesses demanded by the IO?

Charged Officer is entitled to ask for the documents which may be of help in his defence. In fact, the Inquiry Officer is required to ask for the details of the documents and witnesses required for the purpose of defence.

Although it is for the Inquiry Officer to decide on the relevance of the documents and witnesses cited by the Charged Officer, Presenting Officer need not be a mute spectator at this stage. Being a party to the proceedings, he has a right to express his opinion. **Besides, he also has a role to assist the Inquiry Officer by way of bringing to the notice of the latter the rule position and the custodian of the document which has been cited by the Charged Officer**

14. What is the role of the PO in collecting the additional documents demanded by the CO?

Often, the Inquiry Officers request the Presenting Officer to collect the documents required by the Charged Officer for the purpose of his defence. This practice is likely to vitiate the inquiry and must be strictly avoided.

The documents required by the Charged Officer must reach the Inquiry Officer direct from the custodian of the documents. Collection of the documents by the Presenting Officer may result in allegation being leveled by the Charge Officer that the documents were tampered while under the custody of the Presenting Officer.

If the Inquiry Officer requests the Presenting Officer to collect these documents, the latter should politely apprise the former of the problems involved. However, there can be no objection to the Presenting Officer transiting these documents in sealed covers from the custodian of the documents to the Inquiry Officer.

15. What is the role of the PO in handing over the listed documents to the IO?

After the Inspection of the documents by the Charged Officer, in the next hearing, the Presenting Officer is required to hand over the listed documents to the Inquiry Officer, who will be taking over the documents and marking them as SE-1, SE-2, etc. At this stage, the Presenting Officer should pay special attention to these aspects:

The facts regarding the admission and dispute over the listed documents should be correctly brought out in the Daily Order Sheet.

The documents taken over by the Inquiry Officer are to be signed by the Presenting Officer and the Charged Officer.

Presenting Officer should ensure that the details of the documents taken over are correctly reflected in the daily Order Sheet. This alone will serve as a receipt for the documents handed over by the Presenting Officer.

16. Is the PO entitled to have copies of the additional documents demanded by the CO?

As the Charged Officer is entitled for the copies of the listed documents, the Presenting Officer is also entitled for the copies of the documents relied upon by the Charged Officer. He is also entitled to peruse the originals of these documents. These documents will be collected by the Inquiry Officer and will not be under the custody of the Charged Officer. Hence, the Presenting Officer will have to request the Inquiry Officer for the copies of these documents and the perusal of the originals.

The PO has to carefully go through the documents cited by the Charged Officer and try to anticipate as to how the Charged Officer will draw support from the same. As the Charged Officer will submit his written brief only after the submission of brief by the Presenting Officer, there is no way for the Presenting Officer to understand as to how the Charged Officer relies upon the documents for the purpose of his defence. Presenting Officer can only anticipate this and accordingly do the needful in his written brief.

17. What are the responsibilities of the PO during the Regular Hearing Stage?

During Regular Hearing, witnesses of both sides are examined. As regards the examination of the witnesses of the Disciplinary Authority, PO has the following responsibilities:

- Deciding the witnesses who may be dropped. At times Annexure IV of the Charge Sheet may contain witnesses only for the purpose of introducing the disputed documents. In case the CO did not dispute the authenticity of the

documents, it may not be necessary to call such witnesses. IO may accordingly be informed. This has to be done with the approval of the Disciplinary Authority.

- Deciding as to whether any additional witness is required. This also has to be done with the approval of the Disciplinary Authority. Thereafter a request will have to be made to the IO.
- Contacting and briefing the witnesses. There is nothing unethical in contacting the witnesses in advance and informing of the proposed hearing. If the pre-recorded statement of the witnesses is available, the same may be shown to the witness also. The witness may also be informed of the likely questions during cross examinations and be advised to be ready with answers.
- It is highly unethical to request or persuade or pressurise the witness to depose in any particular manner
- Arranging the attendance of the above witnesses
- Conducting the examination of the witness: Normally, examination in chief may not be in the question answer form. If a pre-recorded statement is available, the same may be read over to the witness and he/she may be asked to confirm the same. The witness may also be asked if he/she would like to add, subtract or modify the contents of the pre-recorded statement. Otherwise, the witnesses may be asked to introduce himself/herself and then state the facts relevant to the case. PO, however, is expected to be ready with the details which are to be stated by the Witness. In case any particular information was not covered by the witness in his/her narration of the events, PO should specifically ask for the same.
- Conducting re-examination of the witnesses where necessary: PO should carefully watch and note down the likely confusions created through the cross-examination. Appropriate questions must be put during re-examination, to clear the misconceptions created through cross-examination.

18. What are the responsibilities of PO during cross examination of Defence Witnesses?

The task of cross examining the defence witnesses involves the following activities:

- Gathering the background information about the defence witnesses.
- Anticipating the deposition of the defence witnesses.
- Observing the examination in chief of the defence witnesses so as to judge the veracity of the statements, involvement/interest of the witnesses and also to object to leading questions.

- Cross examining the defence witnesses

19. What precautions are required on the part of the PO during the Regular Hearing stage?

It is said that efficient examination-in-chief, comprises in asking questions in such a way that the witness understands what answer is required; efficient cross examination comprises in asking questions in such a way that the witness does not understand what answer is required. In addition to the general skill of questioning during examination of witnesses, the PO should take the following precautions:

- a. Ensure that no leading questions are asked during examination in chief and re-examination of the State witnesses
- b. Object to the Leading questions raised by the CO or the Defence Assistant during examination or re-examination of the defence witnesses
- c. Raise objections, where necessary, during cross examination of State witnesses.
- d. Ensure that recorded statement of witness is true to the depositions and free from errors.

20. What are the activities of the PO during post hearing stage?

After the hearing is over, PO is required to submit the written brief. The purpose of the brief is to establish, by relying on the evidence produced in the inquiry that the charge stands proved.

21. What is the format for the brief of the PO?

There is no prescribed format for the brief of the PO. The following format is suggested for the purpose:

- a. Introduction
- b. Details of the charges leveled
- c. Proceedings during the Preliminary Hearing: How was inspection of documents conducted; how many documents were disputed by the CO; how many documents were taken on record by the IO and how many were to be introduced through oral evidence; what were the documents and witnesses demanded by the CO for the purpose of his/her defence.
- d. Proceedings during the regular hearings; how many witnesses were led from each side; whether any new evidence was introduced during the hearing;
- e. Opportunities given to the CO: appointment of Defence Assistant;

adjournments demanded and granted; documents and oral witnesses demanded and allowed, etc.

- f. Case of the Disciplinary Authority: the Charge-facts-evidence co-relation
- g. Evidence on behalf of the Disciplinary Authority
- h. Evidence on behalf of the CO
- i. Analysis of the Evidence presented by the parties.
- j. Conclusion

22. What will happen if the PO could not attend a hearing?

In this connection, para 9.2 of Chapter XI of the Vigilance Manual 1991 Ed provides as under:

Rule 14 (14) of CCA Rules provides that the witnesses may be examined by or on behalf of the Presenting Officer. Absence of PO on any particular hearing would not necessarily imply postponement of hearing if an authorized person is present on behalf of the Presenting Officer. The substituted officer need not be formally appointed as Presenting Officer.

23. What should be the form and frequency of interaction between the PO and the Disciplinary Authority?

The presenting officer presents the case on behalf of the Disciplinary Authority. Therefore, all the actions of the PO should have the approval of the Disciplinary Authority. PO should regularly be apprising the Disciplinary Authority about the proceedings of each hearing. Para 2.4 of Chapter XI of Vigilance Manual 1991 Ed also provides as under

The disciplinary authorities should be kept posted with the progress of oral enquiries. The Presenting Officer should send brief reports of the work done at the end of each hearing to the disciplinary authority in the prescribed proforma

PO should seek permission of IO before dropping any evidence or seeking permission of IO for introduction of any new evidence.

SECTION 5

BRIEF OF THE PRESENTING OFFICER

1. What is the purpose of the written brief of the Presenting Officer?

Submission of the written brief is the culmination of the activities of the Presenting Officer. During the hearing, the parties to the proceedings present documentary evidence and lead oral evidence. Evidence presented during the hearings serve the purpose of presenting facts. The facts must lead to some inference. The link between the bare facts and the inference is required to be established through logic.

Towards this end, Rule 14(19) of the CCA Rules provides as under:

“The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed, and the Government servant, or permit them to file written briefs of their respective case, if they so desire.”

2. Which is a better course of action – making verbal submissions or filing written briefs?

Lawyers generally argue the cases on conclusion of the examination of witnesses in the judicial proceedings. In most of the disciplinary cases, the summing up of the case is done through submission of written briefs. All the parties to the proceedings prefer the submission of written briefs because of the following reasons:

- (a) If the case is argued orally, the Inquiring Authority will have to take down notes of the argument and the same will again have to be reduced to writing. Submission of written briefs saves this extra labour for the Inquiring Authority.
- (b) Arguing a case is a more difficult task than leisurely writing a brief. Argument calls for certain additional skill i.e. Presentation skills, verbal fluency, presence of mind, etc.
- (c) Officials are mostly familiar with the written submission of their proposals and would feel at home while preparing written briefs.
- (d) While arguing a case one may miss a point. But written briefs can always be rechecked and shown to an expert before submission and omissions can be avoided.
- (e) Above all, the Presenting Officer can get his written brief vetted by the appropriate authorities before submission to the Inquiring Authority.

3. What is the source material from which Presenting Officer prepares the written brief?

The content of the written brief of the Presenting Officer is derived from the following:

- (a) Charge Sheet
- (b) Statement of defence given by the Charged officer at various stages
- (c) Evidence led on behalf of the parties – documentary and oral
- (d) Daily Order Sheets
- (e) Interlocutory Orders passed by the Inquiring Authority in the course of Inquiry

4. What information in the Daily Order sheet and the Interlocutory Orders passed by the Inquiring Authority are of use in the written brief of the Presenting Officer?

It is good practice for the Presenting officer to highlight that the charged officer has been given full opportunity of defence in the Inquiry – say the adjournments sought by him were granted, documents sought by him were made available, etc. Information In this regard, will be available in the Daily Order Sheets and the Interlocutory Orders of the Inquiring Authority.

5. What is the sequence in which the briefs are presented by the Presenting Officer and the charged officer?

Presenting Officer's brief is to be submitted first. Charged officer is allowed to file his/her brief after perusal of the written brief submitted by the Presenting Officer.

6. What is the authority or justification for asking the Presenting Officer to submit brief in the first instance?

Rule 14 (19) does not explicitly state that the Presenting Officer's brief must be submitted in the first instance. However, DoPT OM No. 11012/18/77-Estt.(A) dated 2 Sep 1978 provides that the Presenting Officer's brief must be submitted in the first instance and a copy thereof must be made available to the charged officer. This OM explicitly states:

"In case the copy of the brief of the Presenting Officer is not given to the Government Servant, it will be like hearing arguments of the Presenting Officer at the back of the Government Servant. In this connection attention is also invited to the judgment of the Calcutta High Court in the case of Collector of Customs Vs. Mohd. Habibul [(1973) 1 SLR 321 (Cal)] in which it is laid down that the requirements of Rule 14(19) of the CCS (CCA) Rules 1965 and the principles of natural justice demand that the delinquent officer should be served with a copy of the written brief filed by the Presenting Officer before he is called upon to file his written brief."

7. While the charged officer has the benefit of knowing the submissions of the Presenting Officer before preparing the defence brief, the latter is denied a similar opportunity. Does it not put the Presenting Officer in a disadvantageous position?

One of the cardinal rules in criminal jurisprudence is that the prosecution has to prove the case without relying upon the defence. The following observation of the Hon'ble Supreme Court in *Sharad Birdhi Chand Sarda vs State Of Maharashtra* on 17 July, 1984 [1984 AIR 1622, 1985 SCR (1) 88] is relevant in this context:

It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view.

Accordingly, the Presenting Officer has to submit his/her written brief without any reference to the submissions by the charged officer.

On the other hand, the charged officer has to counter the allegations leveled in the charge sheet and controvert the submissions by the Presenting Officer. Thus, it is in order that the Presenting Officer's written brief is made available to the charged officer and not vice versa.

8. What are the points to be taken care of by the Presenting Officer while preparing the written briefs?

While preparing the written brief the Presenting Officer should pay attention to the following aspects:

- (a) **Form** : Although no form has been prescribed for the written brief of the Presenting Officer it is desirable that the same conforms to a form which will facilitate easy presentation and effective communication of the ideas
- (b) **Facts**: The brief should contain all the relevant facts which help in establishing the charge and also the fact the charged officer has been provided with reasonable opportunity. Every inference/conclusion in the brief must be duly supported by evidence. This the facts based on which the conclusions are drawn must be pointed out,
- (c) **Logic**: Bare facts may not be able to lead to any conclusion. The facts are to be linked to the charge through logic.
- (d) **Language**: Although, ideas constitute the backbone of the brief, yet the language must be faultless, powerful, impressive and easy to understand.

9. What is the role of logic in the written brief of the Presenting Officer?

We have seen in an earlier chapter that a charge stems from a set of facts. The Facts are proved through evidence. Logic is the linkage which connects evidence to the charge through facts.

For example, the charge against an officer is that he had issued a false certificate of having inspected a product on a date when the product was not in existence. Following pieces of evidence were produced during the inquiry:

- (a) Inspection report dated *Day D* duly signed by the charged officer
- (b) Stock register of finished product as on *D-4*
- (c) Stock register of the raw material as on *D-10*
- (d) Gate pass for exit of the finished product on *D-3, D-2* and *D-1*
- (e) Entry record of raw material for *D-9* to *D-1*
- (f) Expert opinion on how much raw material would be required for preparing one unit of product.

Above facts are seemingly disjointed and do not lead anyone anywhere. There is a logical chord running through the above disjoint pieces of facts, which will lead to the establishment of the charge when linked logically. Presenting Officer's job is to show as to how different pieces of evidence taken together lead to establishing the charge

10. How important is the role of *language* in the preparation of the written brief of the Presenting Officer?

The basic purpose of preparing the written brief is presenting the details and convincing the Inquiring Authority about the reasons for concluding that the charges are proved. The facts to be presented in the brief may be many. The analysis and presentation of these facts call for communication skill of a fairly high order. The brief is required to be read and understood by the Inquiring Authority without any clarification from the Presenting Officer. (Obviously, the Inquiring Authority will be reading the brief at his convenience and the Presenting Officer is not expected to be present for offering any explanation).

Besides, verbal presentation has certain advantages such as body language, voice modulation, volume, pitch, etc. If the case is verbally argued, the Presenting Officer may be able to emphasize his points by raising his voice or slowing the pace of delivery. On the other hand, the Presenting Officer is *arguing* his case through the written brief and hence his brief must be able to *speak* loud and clear. Therefore, special efforts must be made by the Presenting Officer to prepare his written brief in a lucid style, endowed with a logical sequence. The Presenting Officer should therefore adopt an effective style of writing. It is desirable to type the vital points in bold letters or otherwise highlight the same.

11. How many copies of the written brief are to be submitted by the Inquiry Authority?

Ideally, the Presenting Officer should prepare as many copies of the written brief as the number of charged officers (applicable in the case of common proceedings) and an additional copy each for the Inquiring Authority and the Disciplinary Authority. This will obviate the need for preparation of additional copies by the Inquiring Authority.

12. To whom does the Presenting Officer send the written brief?

Normally, Inquiring Authorities adopt two methods for obtaining the briefs from the parties:

- a) The Inquiring Authority may direct the Presenting Officer to submit two copies of the brief so that it (Inquiring Authority) may forward a copy to the Charged Officer.
- b) Alternatively, The Inquiring Authority is also at liberty to direct the Presenting Officer to forward a copy of the written brief to the Charged Officer and then send another copy to the Inquiring Authority along with proof of delivery to the charged officer.

In the later event, care must be taken by the Presenting Officer to obtain the acknowledgment of the Charged Officer for the delivery of the brief. A copy of proof of delivery of the brief to the Charged Officer must be sent to the Inquiring Authority along with the copy of the brief meant for the Inquiry Officer.

In either case, the time limit prescribed by the Inquiring Authority for submission of the brief must be strictly adhered to. If, on account of any unavoidable reason, the time limit could not be complied with, Inquiring Authority must be informed of the reason and extension obtained with the knowledge of the Charged Officer.

SECTION 6

CONDUCT OF INQUIRY – This section elucidates the important steps which are to be followed while conducting an enquiry.

1. What are the stages in 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: From the time the parties start appearing before the IO, till the commencement of presentation of evidence. During this stage CO is asked once again 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 defence
- (c) Regular hearing stage: during this stage, evidence is produced by the parties.
- (d) Post hearing stage: during this stage, the PO and the CO submit their written briefs to the IO and the IO submits his/her report to the Disciplinary Authority.

2. Is there any time limit for commencement of hearing?

As per rule 14(7) of the CCA Rules, first hearing of the case must be scheduled within 10 days of the IO receiving the Charge sheet. As the copy of the Charge Sheet is sent to the IO together with the appointment order, it is implied that the inquiry is to commence within 10 days of the IO receiving the appointment order. The above rule also provides the time limit prescribed is extendable by maximum of another 10 days.

3. What happens during the first hearing of the case?

As per Rule 14(9) of the CCA Rules, when the CO appears before the IO, the latter should ask whether the CO admits the charges or has any defence to make. If the CO pleads guilty in respect of any of the charges, the IO should get it recorded and get it signed by the CO. Rule 14(10) provides that the IO shall send a finding of guilt to the Disciplinary Authority in respect of the charges in respect of which

the CO has pleaded guilty.

In addition to the above, the IO shall fix a schedule for the following:

inspection of the documents listed in Annexure III of the Charge sheet, within five days extendable by a maximum of another five days [Rule 14(11)(i)]

- (a) Submission of the list of witnesses to be examined on behalf of the CO [Rule 14(11)(ii)]
- (b) Submission of the list of additional documents required by the CO. within ten days extendable by a maximum of another ten days. Rule 14(11)(iii)]

4. Is it advisable for the IO to ask the CO during the first hearing as to whether the CO has faith in the IO?

It is not a bad idea to ask the CO during the first hearing as to whether the CO has faith in the IO and record the answer to the question. This may be quoted against the CO, in case the CO raises any frivolous complaint of bias later. On the other hand, if the CO expresses lack of faith on the IO in the first instance, the same may be recorded and the CO may be advised of the option open to him/her for seeking change of IO.

5. Is it necessary for the IO and PO to be present during the inspection of listed documents by the CO?

Not necessarily. Para 3.7 of Chapter XI of the Vigilance Manual 1991 Ed provides that inspection of listed documents is to take place at *“such place as the Inquiry Officer may direct in the presence of the Presenting Officer or any other gazetted officer deputed for the purpose by the disciplinary authority or the other authority having the custody of the records.”*

6. How to conduct inspection of listed documents which are held up in the court?

The following alternatives are open in respect of the documents held up in the court and required for inspection by the CO:

- (a) An application may be made to the court for making the documents available at least temporarily
- (b) If the above request is not allowed by the court, inspection of the documents by the CO may be arranged in the Court

7. Can a document sought by the CO for the purpose of defence be denied?

Any document sought by the CO for the purpose of defence, can be denied only on either of the two grounds. Firstly, if the IO is of the opinion that the document is not relevant to the case. In this case, the IO has to pass a reasoned order as prescribed in the proviso to Rule 14(12) of the CCA Rules.

In addition to the above, authority in possession of the documents may deny the production of documents for reasons to be recorded in writing that the production of the said document is against public interest.

In this connection, para 3.5 of Chapter XI of the Vigilance Manual (1991 Ed) provides as under:

3.5 Denial of access to documents which have a relevance to the case will amount to violation of the reasonable opportunity mentioned in Article 311 (2) of the Constitution. Access may not, therefore, be denied except on grounds of relevancy or in the public interest or in the interest of the security of the state. The question of relevancy has to be looked at from the point of view of the Government servant and if there is any possible line of defense to which the document may be in some way relevant, though the relevance is not clear at the time when the Government servant makes the request, the request should not be rejected. The power to deny access on the grounds of public interest or security of State should be exercised only when there are reasonable and sufficient grounds to believe that public interest or security of the State will clearly suffer. Such occasions should be rare.

8. Generally, what are the documents which are not made available by the Head of the Department?

Para 3.6 of the Vigilance Manual (1991 Ed) indicates the following as examples of documents, access to which may reasonably be denied:

- i) Reports of a departmental officer appointed to hold a preliminary enquiry or the report of the preliminary investigation of SPE. These reports are intended only for the disciplinary authority to satisfy himself whether departmental action should be taken against the Government servant or not and are treated as confidential documents. These reports are not presented before the Inquiry Officer and no reference to them is made in the statement of allegations. If the accused officer makes a request for the production/inspection of the report of the Investigating Officer, S.P.E., the Inquiring Authority should, instead of dealing with it himself, pass on the same to the Disciplinary Authority concerned, who may claim privilege of the same in public interest, as envisaged in proviso to sub-rule (13) of Rule 14 of CCS (CCA) Rules, 1965.

- ii) File dealing with the disciplinary case against the Government servant - The preliminary enquiry report and the further stages in the disciplinary action against the Government are processed on this file. Such files are treated as confidential and access to them should be denied.
- iii) Advice of the Central Vigilance Commission. - The advice tendered by the Central Vigilance Commission is of a confidential nature meant to assist the disciplinary authority and should not be shown to the Government servant.
- iv) Character roll of the officer. - The CR of the official should not be shown to him.

The above provision has to be perceived in the context of the Right to Information Act and subsequent judicial pronouncements. As is well known, it is mandatory to provide the advice of the CVC. Besides, the employees have acquired right to peruse their Annual Performance Appraisal Reports.

9. Can the IO deny allowing a witness named by the CO for the purpose of his/her defence?

IO can deny a witness only on the ground of relevance.

10. What is the sequence of events during Regular Hearing?

Following is the sequence of events during Regular Hearing:

- (a) Documentary evidence on behalf of the Disciplinary Authority are taken on record
- (b) Oral evidence of Disciplinary Authority is taken on record
- (c) CO asked to state his/her defence
- (d) Documentary evidence on behalf of the Disciplinary Authority are taken on record
- (e) Oral evidence of Disciplinary Authority is taken on record
- (f) Mandatory question by the IO
- (g) Fixing time for submission of briefs by the PO and CO

11. Can the statements recorded during preliminary investigation be relied upon?

In this connection para 6.2 of the Vigilance Manual (1991 (ed) provides as under:

Instead of recording the evidence of the prosecution witness, de novo, wherever it is possible, the statement of a witness already recorded at the preliminary inquiry/investigation may be read out to him at the oral inquiry and if it is admitted by him, the cross-examination of the witness may

commence thereafter straightaway. A copy of the said statement should, however, be made available to the delinquent officer sufficiently in advance (at least 3 days) of the date on which it is to come up for inquiry. As regards the statement recorded by the Investigating officers of the CBI, which are not signed, the statement of the witness recorded by the Investigating Officer will be read out to him and a certificate will be recorded thereunder that it had been read out to the person concerned and has been accepted by him.

12. What is the procedure for procuring the documents demanded by the charged officer?

Inquiring Authority should directly obtain the additional documents demanded by the charged officer. It is incorrect to assign this task to the Presenting officer.

13. What is the order in which the witnesses are to be presented?

The Presenting officer is to lead the State witnesses in the first instance. The order in which the State witnesses are to be led can be left to the discretion of the Presenting Officer. It is desirable to frame the sequence of the witnesses in such a way as to gradually build the case of the Disciplinary authority.

After the State witnesses are examined, the charged officer can be asked to lead defence witnesses, if any, in the order decided by him/her.

14. What are the stages in the examination of witnesses?

Witnesses are examined through the under mentioned three stages:

- (a) Examination in chief
- (b) Cross examination
- (c) Re-examination

15. Who conducts the above three stages of examination?

Examination in Chief is conducted by the party who is producing the witnesses i.e. examination in chief of the State witness will be done by the Presenting officer and examination in chief of the defence witnesses will be done by the Charged officer assisted by the Defence Assistant.

Cross examination is done by the opposite party. i.e. Cross examination of State witnesses will be done by the Charged officer, assisted by the Defence Assistant and cross examination of the defence witnesses will be done by the Presenting officer.

Re-examination will be done by the party who performed examination in chief.

16. What is the scope of Examination in Chief?

Examination in chief is confined to the relevant issue i.e. issues relating to the transaction on which the charges have been framed in the case of State witnesses and the points mentioned in the statement of defence in respect of defence witnesses.

17. What is a leading question?

Leading question is one which indirectly reveals the expected answer to the question.

18. What is the provision regarding leading questions?

Leading questions are prohibited during examination in chief and re-examination. There is no bar on asking a leading question during cross examination. This means that one cannot ask a leading question from one's own witness; but can ask a leading question from the witness presented by the opposite side.

This general rule has an exception viz. that there is no bar on asking a leading question which is introductory in nature. E.g. You are in the working in the store since 2010?

19. What is the scope of cross examination?

Scope of cross is examination is a bit wide. Questions for assailing the credibility of the witness can also be raised.

The following questions are however, prohibited during cross examination:

- (a) Questions without any basis
- (b) Questions which are obscene or indecent
- (c) Questions which are intended to vex or annoy the witnesses

20. What is the scope of re-examination?

Re-examination will be confined to the issues on which cross-examination was conducted.

21. Is there any scope for a second cross – examination?

In case any new issue was raised during re-examination with the permission of the Inquiring Authority, one more opportunity for cross-examination must be afforded.

22. Considering the scope of examination in chief and cross examination, what should be the difference in approaches for these two activities?

It is said that the art of successful examination in chief is to ask questions in such a way that the witnesses understand the answer expected - without the question being a leading question.

On the contrary, the art of cross examination is to ask questions in such a way that the witness does not understand what is the purpose of the question.

23. What is the procedure for recording of evidence by the witnesses?

The statements of the witnesses may be recorded either in narrative form or in question answer form as deemed suitable. Generally, examination in chief may be in narrative form. At times it may even state as under:

The witnesses confirmed the statement given by him during preliminary investigation and said he had nothing more to add and modify.

Cross-examination and re-examination will be in the form of question and answer. It is desirable that the questions and answers are numbered for the sake of easy reference in the written briefs of the PO and charged officer and in the Inquiry report.

Witness will be asked to sign each page of the statement. Copies given to the CO and PO.

23. What is the stage at which the charged officer is asked to lead evidence?

After the case of the disciplinary authority is over, the charged officer will be asked to state his defence. This is only an offer to the delinquent and if the delinquent does not state his/her defence, the inquiry will proceed.

24. What is the order in which the charged officer will present defence?

Charged officer will first present documentary evidence and then lead oral evidence.

25. Can the CO be questioned by PO?

PO can question the charged officer only if he/she presents himself/herself as a witness.

26. What happens if a witness who had given a statement during preliminary investigation changes stand to favour the delinquent?

Change of stand without any justifiable reason will amount to a misconduct and the Government servant who is guilty of such a misconduct renders himself/herself

liable for disciplinary action. In this connection, Central Vigilance Commission Office Order No. 73/12/2005, dated: 15th December, 2005 provides as under:

2. Rule 16, Chapter XIII of Vigilance Manual Vol. I, provides that if a Government servant, who had made a statement in course of a preliminary enquiry, changes his stand during evidence in the enquiry, and if such action on his part is without justification or with the objective of favouring one or the other party, his conduct would constitute violation of Rule 3 of the Conduct Rules, rendering him liable for disciplinary action. Such misconduct in the context of criminal cases becomes all the more grave.

3. The Commission is of the view that this unhealthy tendency on part of public servants needs to be curbed effectively. The Commission, therefore, desires that such misconduct, whenever reported by the CBI, should be viewed with utmost seriousness and necessary disciplinary action initiated promptly.

27. Can a witness be called for the second time?

Under Rule 14(15) of the CCA Rules, the Inquiring Authority may at its discretion allow the Presenting officer to re-call witness. In the event of a witness being recalled and re-examined, care must be taken to provide to the opposite side an opportunity to cross-examine the witness as well. This is not at the discretion of the Inquiring Authority – but a mandate of the principle of natural justice which requires providing reasonable opportunity of defence.

28. Can a hearing be held in the absence of the CO?

In this connection, Vigilance Manual 1999 Ed provides as under:

If in any particular hearing, the accused officer is unable to come for any reason, his Assisting Officer can proceed with the case if he has authorization to this effect from the accused officer. Similarly, the Assisting Officer can submit the defence of the delinquent officer contemplated in Rule 14 (16) of the CCS (CCA) Rules, 1965, if he holds authorisation to this effect from the delinquent officer.

29. Can the Inquiring Authority question the witnesses?

Rule 14(14) explicitly provides that the Inquiring Authority may also put such questions to the witness as it thinks fit. Two cautions must be borne in mind while exercising this statutory right. Firstly, the parties to the proceedings acquire a right to cross-examine the witness on the issued over which the Inquiring Authority has examined the witnesses. Secondly, the questions must not be with the object of establishing the charge. Such questions may put the Inquiring Authority in the mantle of the Presenting Officer which may lead to quashing of the proceedings

on the allegation of bias.

30. Can the Inquiring Authority question the charged officer?

The Inquiring Authority is required under Rule 14(18) to question the Charged Officer generally about the circumstances appearing against him. However, probing questions which may lead to incrimination of the Charged Officer will cast aspersions about the role of the Inquiring Authority.

Inquiry proceedings were set aside in *Moni Shankar Vs. Union of India (UOI) and Anr.* [JT2008(3) SC484, (2008)3SCC484, 2008 (3)SLJ325(SC)] for the reason that

the Inquiring Authority had exceeded his limit in asking the mandatory question, as may be seen from the following:

1. *The Enquiry Officer had put the following questions to the appellant:*

having heard all the PWs, please state if you plead guilty? Please state if you require any additional documents/witness in your defence at this stage? Do you wish to submit your oral defence or written defence brief? Are you satisfied with the enquiry proceedings and can I conclude the Enquiry?

2. *Such a question does not comply with Rule 9(21) of the Rules. What were the circumstances appearing against the appellant had not been disclosed.*

31. What is mandatory question?

Rule 14(18) has a provision that empowers the Inquiry Authority to question the Charged Officer. This question shall be asked in the cases wherein the CO had not presented himself as a witness. Probably the use of the word “shall” in the sub rule has resulted in this being called a ‘mandatory’ question. However, it must be understood that it may not be a question at all. The purpose of this question is to enable the CO to explain the circumstances against him. The IO is expected to question the CO “on the circumstances appearing against him” so that the CO can defend himself appropriately.

32. What happens if the deposition of a witness is in a language other than English or Hindi (whichever is the language of the proceedings)?

In this connection, Para 13.6 of the Vigilance provides as under:

If a witness deposes in a language other than English but the depositions are recorded in English, a translation in the language in which the witness deposed should be read to the witness by the Inquiry Officer. The Inquiry Officer will

also record a certificate that the depositions were translated and explained to the witness in the language in which the witness deposed.

33. What happens if a witness fails to turn up for examination?

A government servant summoned by the Inquiring Authority for tendering evidence in a disciplinary proceeding is bound to attend the same. Failure to do so will amount a misconduct. Therefore, if a witness fails to turn up for inquiry without proper justification the Inquiring Authority may report the matter to the controlling officer of the witness so that disciplinary action could be initiated.

34. Who bears the expenditure incurred by the witnesses and parties for attending the inquiry?

In respect of serving Government Servants, the expenses are to be borne by the respective organization where the witness is employed based on the certificate issued by the Inquiring Authority. Otherwise the expenses will have to be met by the Disciplinary Authority.

35. What facility is provided to the Inquiring Authority for expeditious completion of the proceedings?

DoP&T OM No. 142/5/2003-AVD.I dated 6.4.2004 provides that Inquiring Authority may be relieved of normal duties for 20 days in two spells for timely completion of inquiry.

REFERENCES

1. **Swamy's Manual on Disciplinary proceedings for Central Government Staff**
2. **Swamy's compilation of CCS CCA Rules**
3. **Vigilance Manual, 1991, 1999, 2005 and 2021 editions**