

# DISCIPLINARY PROCEEDINGS

Justice C.V. Karthikeyan  
Judge, Madras High Court

# CONSTITUTION OF INDIA

- Article 311 (1) : No dismissal or removal by an authority subordinate to that by which he/she was appointed.

- Article 311 (2) : No dismissal or reduction in rank
  1. Except after an inquiry – Inquiry is mandatory.
  2. He/She should be informed of the charges against.
  3. Given a reasonable opportunity of being heard in respect of those charges :
    - To peruse records and offer explanation
    - To cross examine witnesses produced
    - To produce records on his/her behalf

# Reasonable Opportunity

- Must be in conformity with the principles of natural justice :
  - Opportunity to deny the charges
  - Opportunity to defend by cross-examining the witnesses
  - Charges must be specific
  - Charges must be intimated
  - Must be given reasonable time

# Natural Justice

- Audi Alteram Partem
  - Hear both sides – No person should be condemned unheard
- Nemo Judex in causa, sua protest
  - No can be a Judge in his/her own cause – Justice is not only to be done but it should also appear that it had been done

# DIFFERENCE

	<b>Court</b>	<b>Departmental Proceedings</b>
Principles	Proof beyond reasonable doubt	Preponderance of probabilities. Charges need not be proved beyond reasonable doubt
Choice of Punishments	Punishment under law is codified	No such codification of misconduct and penalties

# ROLE OF INQUIRY OFFICER

- Record the evidence
- Analyze the evidence
- Record the findings
- Submit the report to the Disciplinary Authority

# STAGES OF HEARING

- Pre-hearing stage
- Preliminary hearing stage
- Regular hearing stage
- Post hearing stage
- Submission of Report



# Pre-hearing stage

- On receipt of Appointment Order :
  - Check if the following are enclosed
    1. Annexures I to IV to the Charge Sheet
    2. Evidence that the Charge Sheet has been served on the delinquent
    3. Reply, if any, of the delinquent
    4. Appointment order of Presenting Officer

- Study the nature of charges
- Acknowledge the appointment order
- Open a daily order sheet and record receipt of appointment order
- Fix a date for holding preliminary enquiry within 10 days
- Issue notice to the delinquent

# Preliminary Inquiry

- Ask the delinquent whether he/she has faith in you being the inquiring officer and clear the question of bias
- Stay the inquiry when application is made raising issues of bias
- Forward the application to the appointing authority for consideration
- Await the orders of the appointing authority on the application
- Stay the inquiry till orders are received

- In case the delinquent expresses confidence in you, proceed and
  1. Satisfy whether he/she has received the charge sheet
  2. Satisfy whether he/she has understood the charges
  3. Enquire whether he/she admits the charges

- If the delinquent admits the charges
  1. The admission should be unconditional
  2. It should be total acceptance of the guilt of the charges

Otherwise it is treated as denial

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

# Supply of Documents

- Copies of all documents to be supplied to the delinquent
- If the documents are bulky and voluminous, fix a date and time for inspection
- Determine whether there are additional list of documents/witnesses and decide their relevancy

- Direct furnishing of list of defence witnesses
- Record reasons for determining relevancy or otherwise of additional witnesses/documents
- If additional documents are relevant, write and call for them from the custodian of the documents
- If additional documents are received, whenever possible, copies to be furnished to the delinquent



# Regular Hearing

- Examination in chief by the Presenting Officer
- Cross examination by the delinquent or his/her representative
- If there is no cross examination, it should be mentioned in the daily order sheet that opportunity was granted but not availed
- On closure of evidence by the Presenting Officer, enquire about defence witnesses and issue summons to them

- Defence witnesses to be examined in chief and cross examined
- Documents to be marked in seriatim mentioning whether they have been marked on the side of the department or on the side of the delinquent and the seriatim of the witness through whom they have been marked

- Make daily order sheet for each hearing date and obtain signature from the Presenting Officer and from the delinquent and his/her representative with date.
- Furnish copy of the daily order sheet on the same day
- Inform the next hearing date and obtain acknowledgment for the same

# After the closure of evidence

- Question the delinquent generally on the circumstances appearing against him/her
- This requirement is mandatory if the delinquent had not examined himself/herself as defence witness
- Hear oral arguments and insist on written arguments to be filed
- Prepare report and submit the same to the appointing authority

# Contents of Inquiry Report

- Introduction
- Assistance provided to the delinquent
- Charges and substance of imputation of misconduct
- Case of the Department
- Case of the delinquent
- Analysis and assessment of evidence
- Findings against each charge
- List of documents / witnesses produced by both sides

# Role of Presenting Officer

- Presenting Officer is appointed by the Appointing Authority to “present the case in support of the charges”
- Departmental proceedings cannot be equated with proceedings before courts of law
- The Inquiry Officer is not a Judge and the Presenting Officer is not a Public Prosecutor
- The proceedings are basically fact-finding exercises

- The Presenting Officer must logically and chronologically present the evidence on record and examine and cross examine witnesses on the facts
- The Presenting Officer should not do anything to vitiate the primary obligation to hold a fair enquiry
- Cross examination should be on facts alone

- On conclusion of oral evidence, the Presenting Officer should present oral arguments
- Written submission should also be submitted
- Presenting Officer should conduct himself with fairness keeping in mind the principles and scope of the departmental proceedings



# CHARGE SHEET

- Precautions to be taken :
  1. This is the initial stage of any disciplinary proceedings
  2. A charge may be framed only when there is some act in violation of rules or when there is misconduct necessitating imposing major penalty
  3. There should be incontrovertible evidence that misconduct has been committed

# Annexure I

- Statement of Charges framed
  - Should be in proper format
  - Should conform to prescribed requirements
  - Issued by competent authority

# Annexure II

- Statement of allegations, namely, imputations
  - Must be clear and unambiguous
  - Separate article for each allegation
  - Full, precise and categorical recitation of relevant and specific acts of omission/commission
  - No reference to preliminary enquiry, internal observations on file or show cause notice and reply

# Annexure III

- List of documents relied upon
  - They must conform to the charges and the imputations
  - They must be relevant

# Annexure IV

- List of witnesses
  - Must be relevant and statements must have a direct bearing on the charges and imputations
  - Must be capable of authenticating the documents

# Questionnaire

- A questionnaire to be enclosed in prescribed format informing the delinquent about the charges, whether he/she requires personal enquiry and whether he intends to admit or contest the proceedings.
- The delinquent must be asked to submit written statement of defence within the time specified

# Thank You

