MASTER CIRCULAR

Master Circular No. 67

Important points to be kept in view by the Disciplinary/ Appellate/ Revisionary/ Reviewing Authorities and Inquiry Officers while handling disciplinary case.

Important points to be kept in view by the Disciplinary/ Appellate/ Revisionary/ Reviewing Authorities and Inquiry Officers while handling disciplinary cases - Master Circular.

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It is noticed that in many cases, the disciplinary proceedings get vitiated on account of failure to follow the prescribed procedure. Some of the common mistakes which are committed by the Disciplinary/ Appellate/ Revisionary/ Reviewing Authorities and Inquiry Officers have been brought out in this brochure for guidance/information of all concerned. This is an attempt to compile the gist of various rules, instructions, etc., issued in this regard from time to time. While referring to this Circular, the original letter referred to therein should be read for a proper appreciation and in case of doubt, the original letter should be relied upon as authority.

Since only the important instructions on the subject have been included in this Master Circular, some instructions might not have found place herein. Instructions contained in circulars not included in the Master Circular, should not be deemed to have been superseded simply because of their non-inclusion.

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2. Disciplinary Authority:

a. **The chargesheet should be issued by the appropriate Disciplinary Authority prescribed in the schedules. It is also essential that the chargesheet is signed by the Disciplinary Authority himself and not by any lower authority on his behalf .**
b. **The provisions in Rule 8 have to be kept in view while ascertaining whether the chargesheet has been issued by the correct authority. In respect of non-gazetted delinquent staff, a major penalty chargesheet can be issued only by an authority who is competent, as per the schedules, to impose on that Railway servant at least one of the major penalties. However, in respect of delinquent employee of gazetted rank, a major penalty chargesheet can also be issued by an authority who is competent to impose on that delinquent employee at least one of the minor penalties.**

   (Rule 8(2) of RS(D&A) Rules.)

c. **Disciplinary Authority would be with reference to the post held by the charged official at the time of initiation of disciplinary action and not with reference to the post held by him at the time the alleged misconduct occurred.**

   (Board's letter No: E(D&A)84 RG6-42 dt. 8.8.84)

d. **While (a), (b) and (c) above refer to the level of the Disciplinary Authority, the Authority who actually functions as Disciplinary Authority can be none other than the one under whose administrative control the delinquent employee works. Also there can be only one Disciplinary Authority for an employee, e.g. for an operating staff, who is under the administrative control of Divisional Operating Manager (DOM), only the DOM can act as Disciplinary Authority, even if the misconduct pertains to violation of**

commercial rules or safety rules and not Divisional Commercial Manager or Divisional Safety Officer.

[Board's letters No. E(D&A)72RG6-13 dt.16.10.73 & E(D&A)94RG6-69 dt.4.8.97 (RBE 82/97)]

e. **If the Disciplinary Authority of a charged official is also involved in the same case then he should not act as the Disciplinary Authority in the said case. The authority who is next higher in the hierarchy should act as the Disciplinary Authority.**

(Board's letter No: E(D&A)90 RG6-123 dt. 9.11.90)

f. **The authority looking after the current duties of a post cannot exercise the disciplinary functions assigned to the said post.**

(Board's letter No. F(E) 60 SA1/1 dt. 4.3.63)

g. **Authority who has acted as a member or Chairman of a Fact Finding Inquiry or Accident Inquiry should not act as Disciplinary Authority because the Charged employee would apprehend that the officer having expressed earlier an opinion would not, as a Disciplinary Authority, depart from his own earlier finding. He may not thus get justice. However, if the report does not indicate a final opinion but only a view, prima facie, he can act as a Disciplinary Authority. A member or chairman of the Fact Finding Inquiry or Accident Inquiry cannot, however act as an Inquiry Officer in that case since the Inquiry Officer should be an authority who should not have prejudged the guilt, even provisionally at an early stage.**

(Board's letter No. E(D&A)63 RG6-16 dt. 23.12.68 read with letter dt.23.5.69)

3. Charge Memorandum:

a. **The charges in a charge memorandum should be drawn up in clear and distinct articles of charges, separate for each alleged act of omission/commission. The charges should be specific and not vague. Where the charges are not entirely separate and distinct, it would be more appropriate to combine the various elements of the charges into a single article of charge but in which the different elements are brought out clearly.**

b. **The articles of charges and the statement of imputation in support of the articles of charges should not be identically worded. While the article of charge should be concise, the statement of imputation should contain details, references etc. relating to the charges and should generally give a clearer idea about the facts and circumstances relating to the alleged act of commission or omission. Specific rules/instructions which may have been violated by the charged official should also be mentioned in the statement of imputation.**

c. Where intention is to bring out the gravity of the charge in a particular case due to the fact that punishments in the past have not resulted in better conduct on the part of the charged official, then the previous record should be brought out in the chargesheet itself to enable the charged official to defend himself with reference to these factors also. Otherwise, Disciplinary Authority cannot take into account the previous misconducts while taking a decision in regard to the present case.

(Board's letter No. E(D&A)68 RG6-37 dt:23.9.68)

d. The list of documents by which and the list of witnesses by whom the charges are proposed to be sustained should be comprehensive and drawn up with due care taking into account the relevance of each document/witness in establishing the articles of charges, their availability and ease of being produced during the inquiry etc. If it is found after the issue of chargesheet that additional documents/witnesses have to be added to the lists, a suitable corrigendum to the charged memorandum should be issued.

4.

a. If a chargesheet is found to be faulty due to any reason like if it has not been issued by the appropriate Disciplinary Authority or if the charges require modification/addition or if a major penalty chargesheet needs to be issued instead of a minor penalty chargesheet etc. the correct procedure would be to cancel the chargesheet, indicating the reasons for such cancellation and stating categorically that the cancellation is without prejudice to the right of the administration to issue of a fresh chargesheet.

[Board's letter No: E(D&A)93 RG6-83 dt.1.12.93 (RBE 171/1993)]

b. In cases where only minor changes are required to be made in the articles of charges or when Annexures II, III and IV need to be modified, instead of resorting to cancellation and issue of a fresh chargesheet, a corrigendum to the chargesheet should be issued. This aspect has to be specifically kept in view in cases where the employee is due to retire shortly or has retired as, after retirement, a chargesheet can be issued only with President's approval and that too only if the time limit of 4 years prescribed in the Pension Rules has not expired. The corrigendum should also be signed by the Disciplinary Authority himself.

5. Copies of documents relied upon should, as far as possible, be supplied to the charged official along with the charge memorandum. If the charged official desires to inspect the original documents, this should invariably be allowed.

6. The charge memorandum should be served in person on the charged official or sent to his address through registered post. If the charged official is not traceable or refuses to accept the charge memorandum, a copy of the charge memorandum should be displayed on the notice board of the charged official's last working place and also pasted on the door of his last known residential address in the presence of two witnesses.

7. If there is unqualified admission of the charge(s) by the charged official, no inquiry need be ordered by the Disciplinary Authority, who can straightway pass final orders. If only some of the articles of the charges are admitted, then an inquiry has to be ordered only in respect of those charges as are not admitted.

(Board's letter No. E(D&A)57 RG 6-6 dt. 26.4.57).

8. Inquiry:

In terms of Rule 9(7), 10 days' time is to be allowed to the charged official for submitting his written statement of defence. The rule also provides that further time may be allowed by the Disciplinary Authority. However, a reminder should be sent immediately after the expiry of the time allowed so that even if further time is allowed by the Disciplinary Authority, undue delay does not take place in progressing to the next stage of the proceedings. If even after reminders, no defence reply is received from the charged official, an inquiry should be ordered immediately and an Inquiry Officer appointed, duly informing the charged official. A lot of delay generally takes place at this stage, after the issue of chargesheet and before Inquiry officer is appointed which needs to be minimised. The appointment of the Inquiry Officer is to be done through a formal order in the prescribed format duly signed by the Disciplinary Authority. The same procedure should also be followed whenever there is a change in the Inquiry Officer and a new Inquiry officer is to be appointed.

9. If, on consideration of the reply of the charged official to the major penalty chargesheet, the Disciplinary Authority is of the view that a minor penalty is warranted in the case, the same may be imposed without holding an inquiry (provided Rule 11(2) is not attracted) and without giving any further opportunity to the C.O. for being heard.

In case the Disciplinary Authority decides to drop the proceedings after considering the reply of the charged official to the chargesheet, an order to this effect should be passed and communicated to the charged official. However, in cases arising out of investigation by the CBI, the CBI should be consulted before a decision is taken to drop any of, or all, the charges. CVC should be consulted where the disciplinary proceedings were initiated on their advice and the

disciplinary authority proposes to drop the proceedings altogether, as distinct from dropping or reviewing or modifying some charges.

(Board's letters No: E(D&A)66 RG6-16 dt. 6.6.66 & E(D&A)81 RG6-28 dt. 27.6.81)

10. Appointment of Inquiry Officer is the prerogative of the Disciplinary Authority. In non-CVC vigilance cases, the Vigilance Organisation will leave the choice of the Inquiry Officer completely with the Disciplinary Authority in most of the cases. In some cases Vigilance may forward panel of Inquiry Officer indicating the number of inquiries pending with each one of them. The Disciplinary Authority in that case may choose one out of the panel and appoint him as Inquiry Officer.

[Board's letter No. E(D&A) 2000 RG 6-30 dated 16.5.2001(RBE 93/2001)]

11. The Inquiry Officer should be sufficiently senior in rank to the charged official to ensure that the inquiry commands the confidence it deserves. Even in respect of Board of Enquiry, each member of the Board should be senior in rank to the charged official.

(E(D&A)2000 RG 6-24 dt.22.2.2001 RBE 37/2001)

However, the above stipulation does not apply to inquiries conducted by Commissioner of Departmental Inquiries of Central Vigilance Commission as they belong to a department different from the one to which the charged official belongs and cannot, therefore, be suspected of bias. (Rule 9(3) of RS(D&A) Rules).

(Board's letters No. E(D&A)71 RG 6-4 dt.27.2.71 & E(D&A)2000 RG 6-24 dt.20.2.2001 RBE 36/2001)

12. After an inquiry is ordered and an Inquiry officer appointed, a Presenting Officer to present the case in support of the charges may be appointed by the Disciplinary Authority. Appointment of a Presenting Officer is not mandatory in all cases and is generally done in complex cases especially those arising out of CBI/Vigilance investigations.

(Board's letters No. E(D&A)75 RG6-32 dt. 23.8.75 & E(D&A)78 RG6-3 dt. 20/22.1.79)

13. If a representation is made by the charged official against the Inquiry Officer, alleging bias on his part, the disciplinary proceedings should be stayed and the representation, along with the other relevant material, should be put up to the appropriate Revising Authority for considering the representation and passing suitable orders.

(Board's letter No. E(D&A)70 RG 6-14 (1) dt. 19.6.74).

14. Transfer of Charged Official during pendency of disciplinary/criminal case:

a. **Non-gazetted staff against whom a disciplinary/criminal case is pending or is about to start, should not normally be transferred from one Railway/Division to another Railway/Division till after finalisation of the disciplinary/criminal case.**

   (Board's letter No. E(D&A)65 RG 6-6 dt. 25.3.67)

b. **In case the Charged Official is transferred after initiation of disciplinary proceedings, the disciplinary authority will be with reference to his new post and under whose administrative control he is working. The new disciplinary authority can continue the proceedings from that stage onwards and pass the orders.**

   (Board's letter No. E(D&A)69 RG 6-12 dt.18.6.69)

15. Points to be kept in view by Inquiry Officers:

a. **A preliminary hearing should invariably be held first after giving due notice, as specified in Rule 9(11). Formal notices have to be sent to all concerned for all the regular hearings too. During the preliminary hearing, the charged official should be asked by the Inquiry Officer whether he has received the chargesheet, understood the charges against him and whether he accepts those charges. The charged official should also be asked if he has inspected the documents listed in the chargesheet, whether he wants some additional documents and whether he wishes to produce some defence documents/witnesses. If any of the defence witnesses are not found to be relevant, the Inquiry Officer may disallow their evidence and advise the charged official accordingly. The relevance of any witness may be considered by the Inquiry officer from the charged official's point of view.**

   (Board's letter No. E(D&A)70 RG6-5 dt. 8.12.70)

b. **If the C.O. requests for production of additional documents during the inquiry and if in the opinion of the Inquiry Officer, some or all of the documents are not relevant to the case, then the Inquiry Officer has to record in writing his reasons for refusal to requisition for production of such**

documents, as provided in Rule 9(15) of RS (D&A) Rules and advise the charged official about the decision.

c. The Inquiry Officer has to maintain a Daily Order Sheet which is the record of all the business transacted by him on day to day basis of the conduct of the inquiry. The facts relating to notices sent, taking on record the documents, requests/representations made by either party and the decisions of the Inquiry Officer thereon, and the examination/cross-examination undertaken should find a mention in the daily order sheet. The daily order sheets should be dated and signed by the Inquiry officer and serially numbered. The Daily Order Sheet indicates whether reasonable opportunity has been given to the charged official, whether the procedure prescribed in the rules has been adhered to, etc.

d. In addition to the Daily Order Sheet, the Inquiry Officer has to maintain the record of the inquiry proceedings in detail. It should contain the date of the proceedings, the officials present, the examination/cross-examination of the witnesses in the form of questions and answers reproduced verbatim and any decision taken by the Inquiry Officer during the proceedings regarding dropping of a witness, allowing/rejecting the requests of the C.O. for production of additional documents, witnesses etc. These should be signed by all present during the hearing. Copy of proceedings should be given to the delinquent employee at the end of each day's proceedings.

The record of proceedings can either be in Hindi or English. Principles of natural justice require that the delinquent officer must have reasonable opportunity to defend himself. The Inquiry Officer should explain the proceedings to the Charged Official in a language known to him and it should be ensured that he understands and accepts the same before his signature is obtained.

(Board's letter No. E(D&A)66 RG 6-7 dt. 30.12.68).

e. During the inquiry, the evidence on behalf of the Disciplinary Authority has to be produced first. It would be incorrect to examine the charged official first, as this would be against the principles of natural justice. All the documents listed in the charge memorandum have to be taken on record and clearly marked as Exhibit No.----- and signed by the Inquiry Officer. All the witnesses listed in the charge memorandum have then to be examined one by one in the presence of the charged official. After examination of each prosecution witness, the charged official has to be given the opportunity to cross-examine the witness. After cross-examination of the prosecution witness, the Inquiry Officer may put such questions to the witness as he thinks fit. If any of the witnesses had earlier given any statement during investigation, fact finding inquiry etc., he should be asked during the inquiry to confirm the said statement before it is taken on record as evidence. If the statement is quite comprehensive, a mere confirmation of the statement by the witness should suffice during the inquiry instead of de novo examination of the witness. The Presenting officer, if any, can also re-examine the prosecution witness after the cross-examination, on any point on which the witness was cross-examined but if the re-examination by the Presenting Officer is on a new point, then the permission of the Inquiry Officer has to be obtained for the same. If re-examination by the Presenting Officer is allowed on any new matter, then an opportunity should be given for further

cross-examination of the witness concerned on such new matter. If any of the prosecution witness is to be dropped due to some reason, this should be done during the proceedings in the presence of the charged official and this fact should also be recorded formally by the Inquiry Officer in the inquiry proceedings.

(Rule 9(20) of RS(D&A) Rules & Board's letters No. E(D&A)70 RG 6-14 dt. 15.1.71 and E(D&A)80 RG 6-47 dt. 25.5.81).

f. Copies of oral evidence recorded during the proceedings should be given to the Charged Official in case he asks for it at the end of each day's sitting or even on the conclusion of inquiry proceedings.

(Board's letter No. E(D&A)65 RG 6-40 dt. 30.7.65).

g. Where no Presenting Officer has been appointed, there should be no objection to the Inquiry Officer examining and cross-examining the witnesses as he is appointed to find out the truth in the charges and such examination/cross-examination is aimed at that end only. However, the Inquiry Officer should refrain from searching cross-examination as this might affect his role as impartial authority.

[Board's letters No. E(D&A)70 RG6-41 dt.20.10.71 & E(D&A)2000 RG6-60 dt. 9.5.2001 (RBE 89/2001)].

h. If the report of hand-writing expert is relied upon as evidence in the inquiry and if the charged official makes a specific request for summoning the hand-writing expert for cross-examination, then it would be obligatory on the part of Inquiry Officer to summon the hand-writing expert for appearing in the inquiry.

(Board's letter No. E(D&A)66 RG 6-24 dt. 13.2.67)

i. After the case on behalf of the Disciplinary Authority is closed, the charged official should be given the opportunity to present his defence. The Charged Official, if he so desires, should be allowed to examine himself in his own behalf. The defence documents, if any, would then be taken on record and defence witnesses, if any, would be examined/cross-examined.

It is not obligatory for the Inquiry Officer to send summons to all the defence witnesses cited by the charge official. If the Inquiry Officer is of the view that the evidence purported to be given by a witness will be irrelevant to the charge against the charged official and failure to secure the attendance of the witness would not prejudice the defence, the Inquiry Officer may reject the request for summoning that witness duly recording the reasons therefor. In the case of outside witnesses cited by the charged official, the responsibility is on him to ensure his presence during the inquiry. However, all those defence witnesses who have been allowed by the Inquiry Officer and who have come to give the evidence, have to be examined.

{Board's letter No. E(D&A)70 RG6-5 dt. 8.12.70 and Rule 9(2)of RS(D&A)Rules}

At the end, the Inquiry Officer may generally question the charged official on the circumstances appearing against him in the evidence produced, to enable him to put forth his explanation. Such questioning of the charged official by the Inquiry Officer would be mandatory if the charged official has not examined himself as a witness and failure on the part of Inquiry Officer to do this would amount to denial of reasonable opportunity.

[Rule 9(21) of RS(D&A) Rules]

j. After the production of evidence is completed, the Inquiry Officer may allow the Presenting Officer and the charged official to file written briefs as a final presentation of their respective cases. This again is not mandatory in all cases but if it is allowed, the Presenting Officer's brief should be obtained first and a copy given to the charged official to enable him to present his defence brief. However, if the inquiry has been held ex-parte, there is no need to give an opportunity to the charged official to file a written brief.

[Board's letters No E(D&A)69 RG6-20 dt.18.6.69 and E(D&A)86 RG6-42 dt: 9.5.86. (RBE 88/86)]

k. If the charged official does not appear before the Inquiry Officer, the inquiry may be held ex-parte. However, a copy of the record of the day-to-day proceedings of the inquiry and notices for the hearings should be sent to the charged official regularly so that he is aware of what has transpired during the proceedings and this also enables him to join the proceedings at any stage, if he so desires. This procedure should be complied with invariably and Inquiry Officer should ensure that full opportunity is provided to the charged official to defend himself.

(Board's letter No. E(D&A) 90 RG 6-34 dt. 18.4.90).

l. The minimum time to be given to the charged official for various purposes like replying to the chargesheet, examination of documents etc., as specified in various sub-rules of Rule 9, should be adhered to strictly.

m. A model time-schedule of 150 days has been laid down for finalisation of a disciplinary case, which also specifies the time within which the different stages in the disciplinary proceedings should be completed. With the introduction of the procedure of furnishing a copy of the Inquiry report to the charged official allowing him to represent against the same before a final decision is taken by the Disciplinary Authority, an additional time of about two months has been added to the model time-schedule. However, the model time schedule is not mandatory but has been prescribed only as a guideline so that disciplinary cases are finalised expeditiously.

[Board's letter No. E(D&A)86 RG 6-41 dt. 3.4.86) & E(D&A)90 RG 6-18 dt. 9.2.90).

n. **While conducting the inquiry, the Inquiry officer should ensure that the principles of natural justice are not violated and there is no denial of reasonable opportunity to the charged official in defending himself.**

(Board's letter No. E-55 RG6-20 dt:4.2.56)

o. **If the Inquiry Officer ceases to function as the Inquiring authority in a case after hearing and recording whole or part of the evidence and a new Inquiry officer is appointed in the case, then the succeeding Inquiry Officer may act on the evidence already recorded by the predecessor, in full or part and also call for further examination as considered necessary. It is not necessary that the successor should hold the inquiry de-novo.**

(Rule 9(24) of RS(D&A) Rules)

p. **The inquiry report should be prepared in accordance with Rule 9 (25). It should contain a detailed analysis of the evidence taken on record during the inquiry with actual references to the depositions of the witnesses and the charged official and also documentary evidence. The findings in respect of each article of charge should be clear and categorical. If a charge is held as partly proved, the findings should clearly state the extent to which the said charge is established with cogent reasons therefor. It should be ensured that the inquiry report is based on detailed analysis of the evidence and findings in regard to the charge(s) are unambiguous.**

q. **The Inquiry Officer should normally complete inquiry within a period of six months from the date of his appointment as such and submit his report. In the preliminary inquiry he should lay down a definite time bound programme for inspection of documents etc. The regular hearing, once started, should be conducted on day to day basis. Adjournments should not be granted on frivolous grounds.**

(Board's letter No. E(D&A)85 RG 6-21 dt. 30.5.1985)

16. Action on Inquiry Report:

b. **When the Inquiry Officer submits the Inquiry Report, the Disciplinary Authority should first go through the report and the inquiry proceedings to ascertain if the prescribed procedure has been followed and the inquiry report has been framed in accordance with Rule 9(25). If any irregularity is noticed by the Disciplinary Authority, the case needs to be remitted back to the Inquiry Officer for further inquiry from the stage at which the lacuna has been detected or for rewriting the Inquiry Report, as the case may be. The case should however not be remitted to the Inquiry Officer for rewriting the report merely on the grounds that the Disciplinary Authority does not agree with the findings of the Inquiry officer.**

c. **The Disciplinary Authority can also himself recall the witnesses and examine, cross-examine and re-examine them, if it is necessary in the interests of justice. However, where this is done, the examination, etc. of the witnesses should be done in the presence of the Charged Official, who**

can take the help of his defence helper also. The disciplinary authority can also arrange the presence of Presenting Officer, if any, at such examination to ensure the interests of the prosecution.

(Board's letter No. E(D&A) 70 RG6-59 dt. 21.4.71)

d. Once the Disciplinary Authority is satisfied that the inquiry has been held in accordance with the rules and the Inquiry Report has also been prepared properly, he should consider the case and arrive at a tentative decision in regard to establishment of the charges. If he is in agreement with the Inquiry Officer in regard to the findings of the charges, detailed views need not be recorded by the Disciplinary Authority at this stage. However, if the Inquiry officer has held the charge(s) as not proved and the Disciplinary Authority disagrees with the Inquiry Officer in this regard, then detailed reasons for dis-agreement have to be recorded by the Disciplinary Authority. In either case, this constitutes only the tentative views of the Disciplinary Authority and not his final views and hence, recording of these views should be worded carefully. Thus, an initial scrutiny of the Inquiry Report by the Disciplinary Authority must invariably be done before the Inquiry Report is sent to the charged official.

[Rule 10 of RS(D&A) Rules and Board's letter No. E(D&A)87 RG6-151 dt. 4.4.96 (RBE 33/96)]

e. The Inquiry Report should then be sent to the charged official alongwith the reasons for disagreement, if any, with the Inquiry officer in regard to any or all of the charges, asking for his representation against the findings of the Inquiry Officer and reasons of disagreement, if any. This should be done even in cases of ex-parte inquiry. The Report should be given to the C.O. even if he is held not guilty.

[Rule 10 of RS(D&A) Rules and Board's letter No. E(D&A)87 RG6-151 dt. 4.4.96(RBE 33/96)]

f. On receipt of the representation of the charged officer, the Disciplinary Authority should consider the inquiry report, the inquiry proceedings, the representation of the charged official, defence brief and Presenting Officer's brief and then arrive at a final decision in regard to each of the charges and also decide the penalty which would be warranted in that case. In cases where disciplinary proceedings have been initiated on the advice of the Central Vigilance Commission, the Disciplinary Authority should first record only a provisional decision since such cases have to be finalised only in consultation with CVC.

i. In non-CVC vigilance cases, if in a case Vigilance has recommended a major penalty and the Disciplinary Authority proposes to exonerate or impose a minor penalty, he should first record his provisional order and then consult Vigilance Organization once. If after such consultation, the Disciplinary Authority is not in agreement with the views of the Vigilance, he is free to pass final orders about the penalty. The Disciplinary Authority should ensure that copy of the Notice Imposing Penalty (NIP) is sent to Vigilance promptly.

Vigilance Organization may, if they so consider, seek revision of the penalty by the appropriate authority.

ii. Likewise, where Disciplinary Authority has imposed a major penalty in agreement with the Vigilance but the Appellate/Revisionary Authority, on consideration of Appeal/Revision or otherwise, proposes to exonerate or reduce the penalty to a minor one, he will consult the Vigilance Organization once. After such consultation, he will be free to take a final decision.

[Board's letter No. E(D&A) 2000 RG 6-30 dated 16.5.2001 (RBE 93/2001)]

iii. The procedure laid down sub-paras (i) and (ii) above should also be followed in those cases also where the Vigilance has recommended imposition of a "stiff major penalty", namely, compulsory retirement/removal/dismissal from service but the Disciplinary/Appellate/Revisionary Authority, as the case may be, wishes to disagree and proposes to impose any of the other major penalties.

[Board's letter No. E(D&A)2000 RG 6-30 dt. 23.9.2002 (RBE 167/2002)]

g. If the Disciplinary Authority proposes to impose a specific penalty but is not competent to impose the same, then he should put up the file, with his views, to the appropriate higher authority who is competent to impose the proposed penalty for a suitable decision on the matter. Special care is required in this connection before imposing the penalty of compulsory retirement, removal or dismissal since these penalties cannot be imposed by an authority lower in rank than the Appointing Authority.

h. The final views of the Disciplinary Authority/Appellate/Revisionary Authority, once recorded on the file, are to be treated as the final decision and cannot be altered either by him or by his successor. If, after recording the final decision on the file, the Disciplinary or Appellate or Revisionary Authority relinquishes charge of his post before the orders are communicated, then his successor cannot consider the merits of the case afresh and arrive at an independent decision but can only communicate the orders of his predecessor. In such a case, the orders would clearly indicate that he is merely communicating the decision already taken by the earlier Disciplinary/Appellate/Revisionary Authority.

[Board's letter No. E(D&A)97 RG 6-72 dated 28.05.2001 (RBE 99/2001)]

i. The final orders of the Disciplinary/Appellate Authority have to be reasoned, speaking and should cover all the important points relating to the disciplinary case. It should also indicate that the representation of the charged official has been considered and if possible certain points raised in the representation should also be commented upon, in brief. The order of the Disciplinary/Appellate Authority should clearly indicate that he has applied his mind to the case and it should withstand judicial scrutiny.

Printed forms should not be used by the Disciplinary/Appellate/Revisionary Authority while passing orders in a disciplinary case.

[Board's letters No. E(D&A)78 RG6-11 dt. 3.3.78, E(D&A)86 RG6-4 dt. 5.8.88, No. E(D&A)91 RG6-122 dt: 21.2.92 (RBE 31/92), and E(D&A)2002 RG6-27 dt. 24.9.2002 (RBE 168/2002)]

j. **There is no provision for sending a notice to the charged official about the proposed penalty before the same is imposed. A provision for a Show Cause Notice at this stage was in force earlier but has been discontinued since 1978. The Disciplinary Authority should therefore record his final views indicating the penalty to be imposed and communicate the same to the charged official immediately thereafter. There is also no provision for giving a personal hearing to the charged official by the Disciplinary Authority.**

k. **The Disciplinary Authority is free to consult any other authority before deciding about his findings on the charges. However, once he adopts any views/comments expressed by some other authority, such views become those of the Disciplinary Authority and in the final orders recorded by the Disciplinary Authority there should be no reference to consultation with some other authority including consultation with vigilance, CVC etc., which may give an indication that the Disciplinary Authority has been influenced by some other Authority. However, where the rules provide for consultation with UPSC, the same has to be brought out clearly in the speaking orders of the Disciplinary Authority.**

l. **The Disciplinary Authority should not take into account previous bad record, punishment etc. while determining the penalty to be imposed unless the chargesheet mentions the past record also so that the charged official, while defending himself with reference to the charges in the present case, has an opportunity to state his case with regard to the past record also, if he so desires.**

(Board's letter No. E(D&A)68 RG 6-37 dt: 23.9.68)

m. **The final orders passed in the disciplinary case should be signed by the Disciplinary Authority himself and not on his behalf. The orders should also clearly indicate the channel of appeal available to the charged official, the authority to whom the appeal should be made and the time limit within which the appeal should be made.**

17. Action under Rule 14:

a. **If an employee is convicted in a court of law, then the Disciplinary Authority can consider the conduct of the employee which led to his conviction and, after giving the Railway Servant an opportunity to make a representation on the penalty proposed, pass necessary orders imposing a suitable penalty, if warranted, in terms of provisions contained in Rule 14(i). If the offence which led to the conviction is of a grave nature and involves moral turpitude, which is likely to render further retention of the employee in**

service undesirable, then he should be dismissed/removed/compulsorily retired. In other cases, the competent authority can impose any of the lesser penalties, as warranted by the circumstances of the case. There is no need for holding an inquiry or even independently assessing the evidence produced in the court of law. However, before such orders are passed, the UPSC should be consulted where such consultation is necessary. The orders of the Disciplinary Authority should be passed immediately after receipt of intimation of the conviction and need not wait for disposal of any appeal which the convicted employee may have filed in a higher court of law. If the higher court of law suspends the sentence, it will have no effect on the penalty imposed by the department so long as the conviction remains in force. If however, the conviction is set aside on appeal, the penalty imposed on the basis of the conviction has to be revoked.

(Board's letters No. E(D&A) 63 RG 6-49 dt. 11.11.63, E(D&A)76 RG 6-4 dt. 4.3.76 & No: E(D&A)93 RG 6-65 dt. 6.6.94)

b. If an employee is convicted but is released under section 4 of the Probation of Offenders Act, it is not to be treated as acquittal. Release under the said Act is ordered by Courts on consideration of factors like age, nature of offence, assurance of good conduct etc. but the conviction is not set aside. Hence, action under Rule 14(i) is justified even if the employee is released under the said Act.

(Board's letter No. E50 RG6-6 dt:7.7.52 & File No. E(D&A)85 RG6-58)

c. The provision in Rule 14(ii) for dispensing with the inquiry and imposition of the penalty straightaway should be used with abundant caution and only where the circumstances are such that it is not reasonably practicable to hold the inquiry. The decision of the Disciplinary Authority in this regard cannot be a subjective decision but should be one based on objective facts supported by independent material. Written and signed statements must invariably be obtained from the witnesses concerned indicating their knowledge of the serious delinquency on the part of the delinquent employee. Before invoking Rule 14(ii), the Disciplinary Authority should make an objective assessment of the situation, collect necessary material in this connection and record in writing detailed reasons as to why it is not possible to hold the inquiry. The circumstances quoted by the Disciplinary Authority should actually subsist at that time and should not be anticipated ones. The recorded decision of the Disciplinary Authority in this respect should withstand judicial scrutiny.

(Board's letters No. E(D&A)85 RG 6-72 dt. 6.2.86, 16.5.86 (RBE 90/86), 6.10.88 and 14.10.88, E(D&A) 86 RG 6-74 dt. 13.4.87 and E(D&A)92 RG 6-48 dt. 6.4.92 (RBE 53/92))

d. Rule 14(ii) should not be invoked in cases of unauthorised absence. In such cases, inquiry should not be dispensed with but should be held, even ex-parte, if necessary.

(Board's letter No. E(D&A)90 RG6-34 dt. 18.4.90)

e. **In case the Disciplinary Authority proposes to invoke Rule 14(ii), he does not have to issue formal Charge Sheet because the departmental inquiry has not to be conducted.**

[Board's letter No. E(D&A)85 RG6-72 dated 16.5.1986 (RBE90/86)]

18. Departmental proceedings and Criminal Proceedings:

There is no bar to initiation and conclusion of departmental action simultaneous with criminal proceedings on the same/similar charges. The ingredients of misconduct for departmental proceedings would be different from those of the offence with which the person is charged in the criminal proceedings. The standard of proof required and the nature of evidence admitted are also different in the two proceedings. The departmental proceedings should continue independently unless they are stayed by a court of law. Such stay orders can be granted by courts on consideration of an application of the charged official that disclosure of his defence in the departmental proceedings would seriously prejudice his case in the criminal proceedings.

(Ref: Supreme Court's judgements in the case of Jang Bahadur Singh Vs. Baij Nath Tiwari (1969(1)SCR 134), Kusheshwar Dubey Vs Bharat Coking Coal Ltd. (AIR 1988 Sup.Court 2118), orders of a 3 judge bench (1997 (2) SCC 699) and Board's letter No: E(D&A) 71 RG 6-36 dt. 6.6.74)

However, if the facts, circumstances and the charges in the departmental proceedings are exactly identical to those in the criminal case and the employee is exonerated/acquitted in the criminal case on merits (without benefit of doubt or on technical grounds), then the departmental case may be reviewed if the employee concerned makes a representation in this regard. The review will obviously be done by the authority who passed the orders in the last.

[Board's letter No. E(D&A) 95 RG 6-4 dt.7.6.95 (RBE 54/1995)]

19. Appeal:

a. **An Appeal has to be preferred within 45 days from the date of delivery of the order appealed against. However, the Appointing Authority can condone the delay and entertain an Appeal even after expiry of the time limit if the Authority is satisfied that the Appellant had sufficient cause for not preferring the Appeal in time.**

(Rule 20 of RS(D&A) Rules)

b. The form and contents of an Appeal have been prescribed in Rule 21 of RS(D&A) Rules, in terms of which, it should be complete, contain all the material on which the appellant relies, shall not contain any disrespectful or improper language, etc. If these conditions are not met but the case otherwise has merit, then it would be more appropriate to direct the appellant to submit a proper appeal rather than rejecting it on these grounds alone.

(Board's letter No. E(D&A)86 RG 6-11 dt. 17.4.86).

c. Appellate Authorities have been specifically indicated in Schedules-I and III. With regard to Schedule-II, the Appellate Authority would be the authority appearing in the column next to the one which imposes the penalty as clarified in Note-1 below Schedule-II. In respect of ADRM and DRM who have concurrent powers in Schedule II and similarly in respect of AGM and GM who also have concurrent powers, DRM and GM cannot act as Appellate Authorities against disciplinary orders passed by ADRM and AGM, respectively. In the case of imposition of a penalty by the Revising Authority or enhancement of the penalty by the Appellate/Revising Authority, the Appellate Authority would be the authority immediately superior to the authority which made the order appealed against.

(Rule 19(1) of RS(D&A)Rules and File No. E(D&A)96 AE10-19).

d. The Appellate Authority has to consider three main aspects viz.

- **i. whether the procedure was followed correctly and there has been no failure of justice;**
- **ii. Whether the Disciplinary Authority's findings are based on the evidence taken on record during the inquiry; and**
- **iii. Whether the quantum of penalty imposed is commensurate to the gravity of offence.**

After considering the above points the case should, if necessary, be remitted back to the Disciplinary Authority with directions; otherwise the Appellate Authority should pass reasoned, speaking orders, confirming, enhancing, reducing or setting aside the penalty. The orders of the Appellate Authority should be signed by the authority himself and not on his behalf.

(Rule 22(2) of RS(D&A) Rules & Board's letter No. E(D&A) 78/RG6-11 dt. 3.3.78)

e. The Appellate Authority should give high priority to disposal of Appeal and, as far as possible, an Appeal should be disposed of within one month.

(Board's letter No. E(D&A) 71 RG 6-22 dt.11.6.71)

f. If the Appellate Authority proposes to enhance a penalty, a notice has to be given to the charged employee allowing him to represent against the enhancement and orders should be passed only after considering the

representation. Also, in cases where no inquiry had been held before imposition of the penalty by the Disciplinary Authority and if the enhanced penalty is such that holding of an inquiry is compulsory then the Appellate Authority must itself hold the inquiry first or direct that such inquiry be held and thereafter on the basis of that inquiry pass such orders as it may deem fit.

(Proviso under Rule 22(2) of RS (D&A) Rules.)

g. A non-gazetted Railway servant can seek a personal hearing from the Appellate Authority in cases of certain penalties. In that case the Appellate Authority may grant the same at its discretion. During the personal hearing, the Railway employee can be accompanied by another Railway servant or trade union official subject to conditions specified in that regard to assist him.

(Rule 24(1) of RS(D&A) Rules)

h. If the Appellate Authority is of the view that the penalty of dismissal/removal/compulsory retirement imposed on an employee by the Disciplinary Authority should stand but considers re-appointment of the employee as a fresh entrant taking into account extenuating circumstances, if any, then such re-appointment should not be ordered as a part of the appellate order. The appellate order in such cases should merely confirm the penalty imposed. Thereafter, the question of re-appointment of the ex-employee, as a fresh entrant, can be considered separately, as an administrative exercise, in accordance with the extant rules on the subject, contained in Rule 402, Indian Railway Establishment Code, Vol.-I. In all such cases of re-employment of dismissed/removed/compulsorily retired employees, specific approval of the authority next higher than the disciplinary/appellate/revising authority, who had last passed orders on the disciplinary case should be obtained.

[Rule 402-RI and Board's letter No. E(D&A)99 RG6-6 dt. 3.6.99 (RBE 123/99)]

i. If an employee is transferred to another Railway/Division after the imposition of a penalty, then the Appeal will lie only to the appropriate Appellate Authority on the Railway/Division where the employee was working at the time of imposition of penalty, notwithstanding employee's transfer.

(Board's letter No. E(D&A) 69 RG 6-8 dt. 19.6.69)

20. Revision/Review

a. Revision is different from review. Review in terms of Rule 25(A) can be undertaken only by the President and only when some new evidence which could not be produced or was not available at the time of passing the order

and which has the effect of changing the nature of the case, is brought to the notice of President. Both revision and review can be undertaken either suo-moto or on submission of a petition by the employee.

b. Revision can be undertaken by the President, Railway Board, GM or any other authority not below the rank of Dy.HOD. It can be undertaken on consideration of a Revision Petition submitted by the employee or as a suo-moto exercise. If undertaken suo-moto, then the revisionary proceedings should not be started till disposal of the appeal, if already submitted or till the expiry of the limitation period of 45 days for submission of appeal. This, however, does not apply to revision of punishment in case of railway accidents.

(Rule 25 (2) of RS(D&A) Rules, 1968)

c. Where a revision petition is submitted by the employee, the petition should be dealt with in the same manner as if it were an appeal. Thus, the time limit for submitting the revision petition is also 45 days, which needs to be indicated in the appellate order and the Revising Authority should also consider the case in the same manner as the Appellate Authority is required to do.

[Rule 25(3) of RS(D&A) Rules and Board's letters No. E(D&A) 84 RG6-44 dt. 8.1.85 (RBE 12/85) and 2.12.86 (RBE 235/86)]

d. The revising authority has to be higher in rank than the Appellate Authority where: -

i. an appeal has been preferred; or

ii. where the time limit prescribed for "revision to be made by the Appellate Authority", as laid down in Rule 25(5) of RS(O&A) Rules has expired.

The above stipulation does not apply to the revisions made by President.

(Rule 25(4) of RS (D&A) Rules, 1968)

The Revising Authority has to be higher than the Appellate Authority both in cases where an appeal had been submitted and disposed of and where no appeal was preferred. This stipulation, however does not apply to revision by President.

Amended vide Railway Board's letter No. E(D&A)2003/RG 6-37 dated 13.2.2004 (RBE 28/2004).

(Rule 25(4) of RS(D&A)Rules, 1968)

e. If suo-moto revision is undertaken beyond the time limits given below, then it can be done only by the General Manager or Railway Board provided they are above the Appellate Authorities or by the President even if he happens to be the Appellate Authority :-

i. **Beyond 6 months from the date of the order to be revised in case where it is proposed to impose a penalty (where no penalty is in force) or enhance a penalty.**

ii. **Beyond one year from the date of the order to be revised in case where it is proposed to cancel the penalty imposed or reduce the penalty.**

These time limits are relevant only for suo-moto proceedings and not for consideration and disposal of Revision Petitions, which have to be done only by prescribed Revising Authority subject to condonation of delay, if any, in submission of revision petitions.

(Rule 25(5) of RS(D&A) Rules)

f. **If the Revising Authority proposes to impose a penalty (where no penalty has been imposed) or enhance the penalty, then a show cause notice has to be issued to the Railway servant indicating the proposed penalty, to enable him to represent against the said penalty. If the proposed penalty is such that holding of an inquiry is essential before its imposition and if an inquiry has not already been held in that case, then an inquiry should first be held before the proposed penalty can be imposed by the Revising Authority.**

(Proviso (a) and (b) under Rule 25 (1) of RS(D&A) Rules, 1968)

g. **There are certain special provisions for non-gazetted staff as under:-**

i. **A Group 'C' employee who has been dismissed/removed/compulsorily retired can submit his revision petition directly to the General Manager, even though the prescribed Revising Authority may be a lower authority in his case and can also request the General Manager to refer his case to Railway Rates Tribunal for advice. In that case the General Manager shall refer the case to Railway Rates Tribunal. If the General Manager does not propose to accept the advice of RRT, approval of Railway Board is required before final orders are passed.**

(Rule 24(2) of RS(D&A) Rules, Board's letters No. E51 RG 6-20 dt.17.5.52, E(D&A)61 RG 6-28 dt. 5.6.63 and E(D&A)83 RG 6-8 dt. 25.3.83).

ii. **A Group 'D' Railway servant who has been dismissed/removed/ compulsorily retired may submit his revision petition directly to the Divisional Railway Manager or where he is not directly under control of any DRM, to the senior most administrative grade officer.**

(Rule 24(3) of RS(D&A)Rules, 1968)

h. **Revision is a one-time exercise and there is no provision for a second revision of the case. However, if the revisionary order imposes a penalty where no penalty was earlier imposed or if it enhances the penalty, the rules provide for submission of an appeal against such**

imposition/enhancement of the penalty, to the next higher authority. There is no provision for further revision of that appellate order.

[(Board's letters No. E(D&A)79 RG6-40 dt. 18.8.81 & No. E(D&A)94 RG6-11 dt. 31.8.94 (RBE 68/94)]

i. In cases of enhancement of the penalty, if the lower penalty has already been undergone by the charged official in whole or in part, then the facts relating to the original penalty can be taken into consideration by the Revising Authority who can impose an additional penalty by way of enhancement of punishment.

(Board's letter No: E55 RG6-14 dt. 29.2.56 and No. E(D&A)71 RG6-18 dt.12.12.72)

j. Revision/Review of disciplinary cases already finalised before retirement of the concerned Railway employee cannot be initiated after his retirement with a view to impose a cut in the pensionary benefits. However, in cases where a show cause notice for suo-moto revision had been issued before retirement or where a revision petition submitted by the employee was pending at the time of retirement, revisionary proceedings can continue after retirement also.

[(Board's letter No. E(D&A)93 RG6-61 dt. 11.1.2000 (RBE 5/2000)]

k. Pending Revision Petitions/Appeals have to be disposed of on merits by the Revising/Appellate Authority, even if the employee concerned may have died in the meanwhile.

[Board's letter No: E(D&A)85 RG6-46 dt: 11.11.85 (RBE 313/85)]

21. Proceedings after Retirement:

a. If an employee retires while proceedings are continuing, then the proceedings will be deemed to be continuing under Rule 9 of Railway Services (Pension) Rules 1993. The proceedings should be continued even after retirement in the same manner as if the employee is in service and the Disciplinary Authority should record his decision and instead of imposing a penalty, should give specific recommendations on whether a cut in the pensionary benefits is warranted or not. The Disciplinary Authority need not specify the quantum of cut to be imposed. If, in the opinion of the Disciplinary Authority, a cut in the pensionary benefits is not warranted, then the proceedings can be dropped by him at his level. If, however, a cut in the pensionary benefits is recommended by the Disciplinary Authority, then the approval of the President is required before an order imposing a cut in the pensionary benefits is issued. The specific recommendations of the concerned PHOD and CPO should also be obtained before the case goes for President's consideration. The President is also required to consult the UPSC before he passes such an order. If a person is suspended before his

retirement but no chargesheet has been issued till his retirement, even then it would be treated as a case where departmental proceedings have already been instituted before the retirement and such cases should also be dealt with in the same manner as explained above.

b. If, on the date of retirement of an employee, he is neither suspended nor a chargesheet issued to him, then proceedings against him can be instituted only with President's approval. In such cases, the chargesheet is issued on behalf of the President and it cannot be issued in respect of any offence which had taken place more than 4 years before issue of the charge sheet.

If the employee is under suspension at the time of retirement, for the purpose of continuing the proceedings under Rule 9 of RS (Pension) Rules, the proceedings shall be deemed to have commenced from the date of suspension. In such a case the charge sheet can be issued by the prescribed disciplinary authority even after retirement of the charged official. However, this fact should be incorporated in the proforma for charge sheet.

[Board's letter No. E(D&A)2000 RG 6-41 dt. 21.11.2000 (RBE199/2000)]

c. Minor penalty proceedings instituted while a Railway Servant was in service can also be continued under Rule 9 of Pension Rules and a cut in the pensionary benefits imposed if grave misconduct or negligence is established. If a departmental inquiry has not been conducted in such a case, then a show-cause notice has to be given to the pensioner to represent. His representation against the show-cause notice should be taken into consideration before the case is referred to UPSC and final orders passed. However, if an inquiry has already been held then there is no need to issue such show-cause notice. However, as far as possible, minor penalty proceedings should be finalised before retirement to avoid their continuation after retirement.

(Board's letter No. E(D&A)87 RG 6-113 dt. 11.11.87).

d. To ensure that disciplinary proceedings do not continue after retirement for long periods, the time schedule given below has to be followed for finalising the case and sending proposals, if warranted, to the President for imposition of a cut in the pensionary benefits:

- **i. in cases where the proceedings were initiated one year or more prior to the date of retirement of the Charged Official, the proposal should be sent within 3 months of the date of retirement of the charged official.**
- **ii. in cases where the proceedings were initiated within the last year of the service of the charged official, the proposal should be sent within 6 months from the date of retirement of the charged official.**

(Board's d.o. letter No. E(D&A)97/RG 6-Monitoring (I) dt. 20.7.98)

e. All proposals sent for obtaining President's sanction for imposition of a cut in the pensionary benfits should be accompanied by complete papers and information specified in this connection.

(Board's d.o. letter No. E(D&A)97 RG 6-Monitoring (I) dt. 28.1.2000).

f. If an employee, after his retirement, is found guilty in judicial proceedings for an offence committed during his service, a cut in pensionary benefits can be imposed by the President, after consulting UPSC and there is no requirement of giving notice in this regard to the retired railway servant.

g. If Government's displeasure is to be communicated to retired Railway employees, then the authorities who would be competent to do so would be as under:

	AUTHORITY		TYPES OF CASES AND THE RANK UPTO WHICH THE AUTHORITY IS COMPETENT TO COMMUNICATE GOVERNMENT'S DISPLEASURE
I	General Manager/ Addl.General Manager who has been ordered by the Competent Authority to look after the current duties of the General Manager in the absence of a regularly posted General Manager, DG/RDSO, Director General/RSC and CAOs (having independent charge of their organisations)	1	For retired employees upto and including Selection Grade of JA Grade in respect of whom major/minor penalty proceedings had already been initiated before their retirement and where such proceedings are to be dropped but Government's displeasure is to be communicated.
		2	For retired Group 'D', Group 'C' and Group 'B' employees in respect of whom it is decided not to initiate departmental proceedings for imposition of a cut in the pensionary benefits after retirement but communicate Government's displeasure instead.
II	Railway Board	1	For retired Group 'A' officers of SA Grade and above in respect of whom major/minor penalty proceedings had already been initiated before their retirement and where such proceedings are to be dropped but Government's displeasure is to be communicated.
		2	For retired Group'A' Officers in respect of whom it is decided not to initiate departmental proceedings for imposition of a cut in the pensionary benefits after retirement but communicate Government's displeasure instead.
II	President		For any retired railway employee against whom departmental proceedings for imposition of a cut in the pensionary benefits have been instituted after retirement and where, on consideration of the case, the proceedings are to be dropped but Government's displeasure is to be communicated.

[Board's letter No. E(D&A)95 RG 6-32 dt.2.2.98 (RBE 20/1998)]